



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

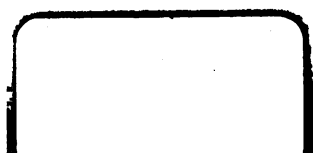
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

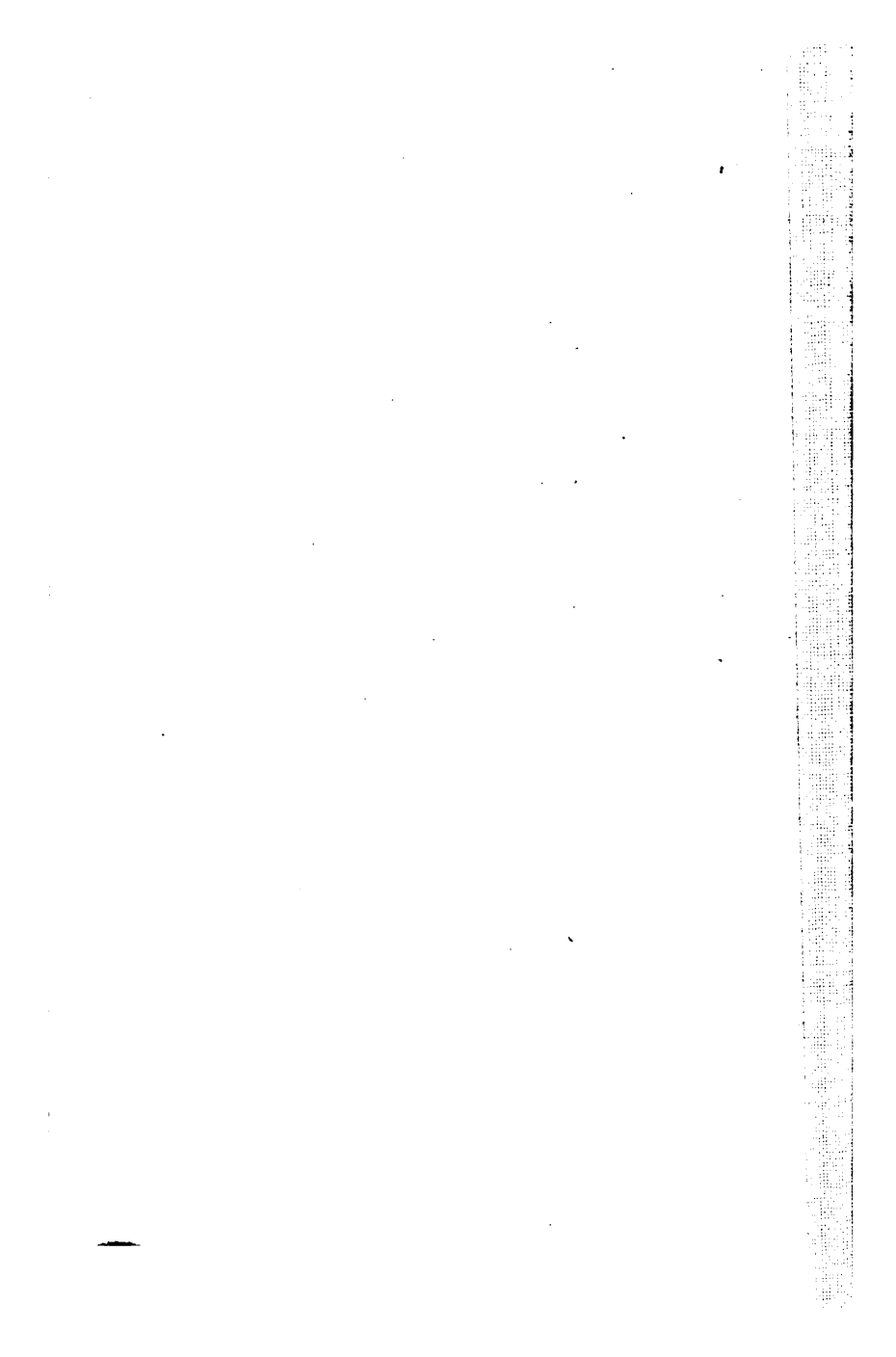
About Google Book Search

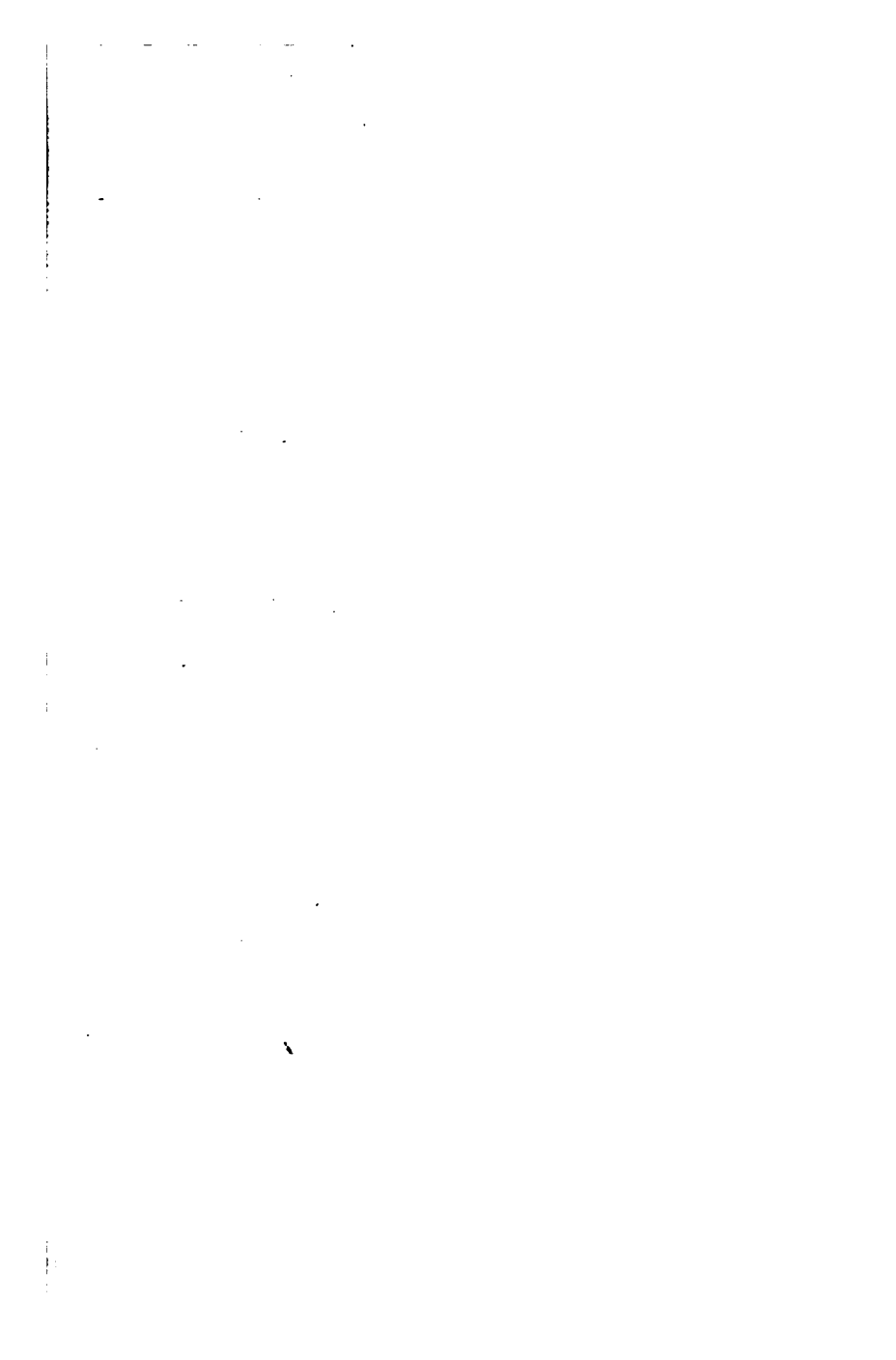
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





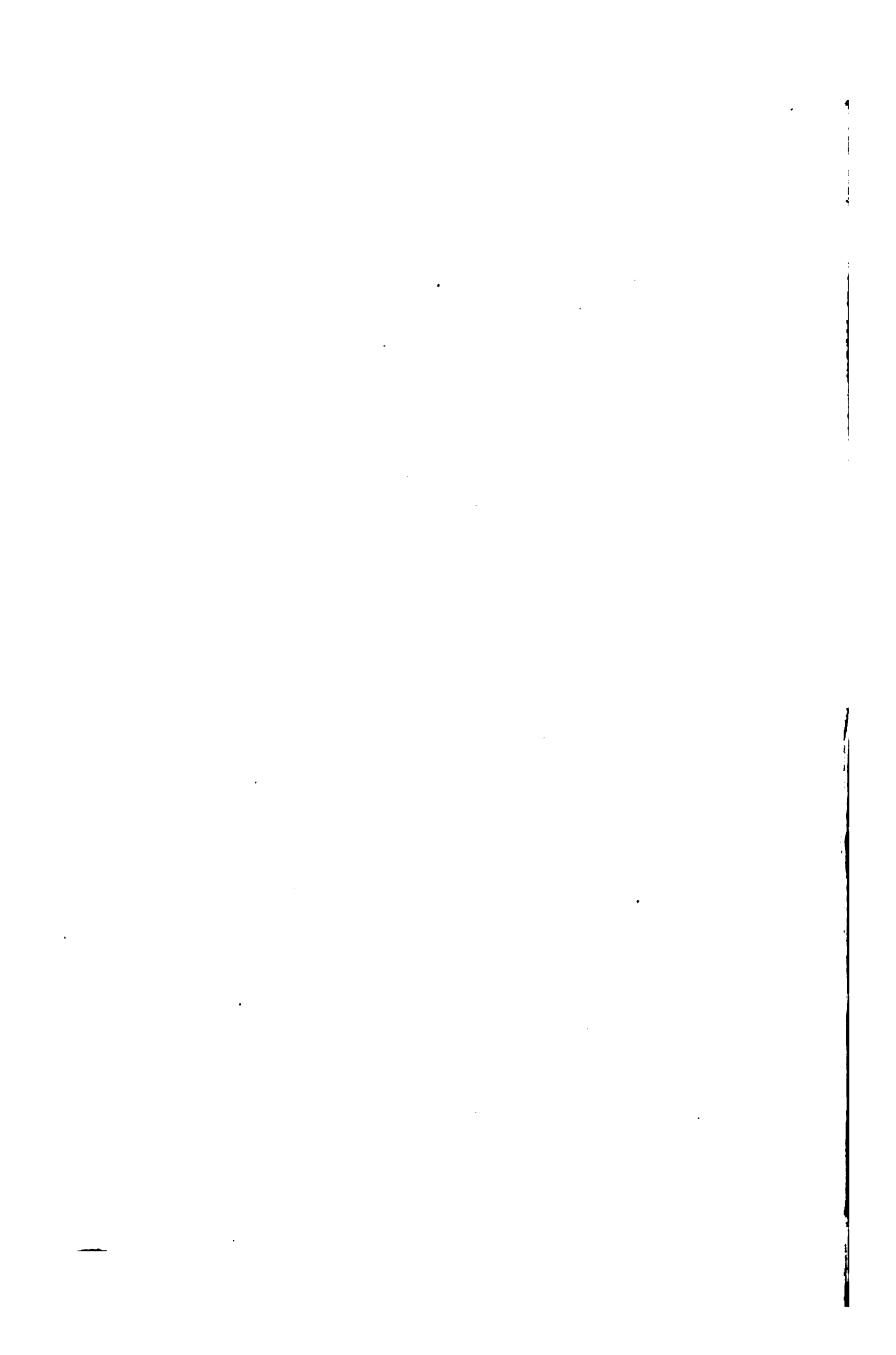
100





Deputy

NAMES



ARGUMENTATION AND DEBATE

BY
JOSEPH VILLIERS DENNEY
PROFESSOR OF ENGLISH IN THE OHIO STATE UNIVERSITY

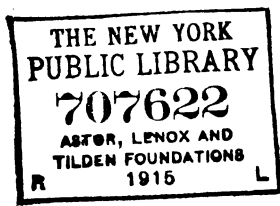
CARSON S. DUNCAN
ASSISTANT PROFESSOR OF ENGLISH IN THE OHIO
STATE UNIVERSITY

FRANK C. MCKINNEY
OF THE NEW YORK BAR



AMERICAN BOOK COMPANY
NEW YORK .. CINCINNATI .. CHICAGO

DUM



COPYRIGHT, 1910, BY
JOSEPH VILLIERS DENNEY, CARSON S. DUNCAN
AND
FRANK C. MCKINNEY

Entered at Stationers' Hall, London

Argumentation and Debate
W. P. S.
J. B. S.
V. A. S.

PREFACE

THE aim of this book is twofold: (1) to present briefly and clearly the theory of argumentation, (2) to furnish a sufficient number of complete debates for a thorough course in analysis and briefing.

The discussion of argumentative theory has been condensed, therefore, and, while illustrated to the point of clearness, is suggestive rather than exhaustive, in order that it may be more fully tested in a study of the selections. Some emphasis has been placed upon the principles of logic for the reason that a knowledge of formal logic on the part of the student cannot be presumed. Furthermore, considerable space has been devoted to a study of evidence as it is found in the courts of law. This material will justify itself for the reason that the legal mind is the one best adapted to debate and for the reason that the debater who confines himself within the limitations imposed by the courts not only builds up a stronger argument but is also better prepared to destroy an opposing argument.

The selections have been taken from great debates on critical and living issues of American history, politics, and law. For several reasons they will be found well adapted for analysis and briefing. In the first place, they were delivered by men long practiced in controversy, by men thoroughly trained in life's school of practical affairs. In the second place, the questions debated were at the time of the discussions, and still are, of vital moment to the American people. Hence they are of strong interest to every thoughtful student. In the third place, the arguments were made at such times and under such

circumstances that the speakers were constantly impressed by the great seriousness of the outcome. This fact has given sobriety and earnestness to the debates, qualities that are essential to every convincing argument. In the fourth place, they illustrate the thrust and parry of an actual debate, in which worthy and skillful opponents make use of every fair advantage of both defense and offense.

Numerous exercises have been suggested in the discussion of argumentation. They have been tested by use in the classroom, and have been found practicable. Analytical questions, also, have been appended to the selections. It is hoped that both the exercises and the questions will be found helpful and suggestive. No propositions for debate have been given, for the reason that such questions soon grow old and lifeless. Besides, every instructor has at hand live material for classroom study, in newspapers, in magazines, in local affairs.

The authors wish to thank Mr. Charles E. Blanchard, Assistant Professor of English in the Ohio State University and member of the Ohio Bar, for practical suggestions in the treatment of debate. Other specific obligations are due to various writers on Argumentation, Logic, and Debate, and are acknowledged in the text and the notes.

TABLE OF CONTENTS

PART I

CHAPTER I. THE PROPOSITION.

PAGE

Why a Proposition is Necessary.....	11
What a Good Proposition Involves.....	12
Terms and Copula.....	12
Arguing a Term.....	12
Definition and Interpretation.....	13
Sources of Information.....	14
Dictionaries.....	14
Common Usage.....	14
Origin of Question.....	15
Fairness of Statement.....	16
Debatable Question.....	17
Avoidance of Compound Propositions.....	18
Suggested Exercises.....	18

CHAPTER II. ANALYSIS.

The Conflict of Opinions.....	20
Matter Tacitly Granted.....	21
The Obvious.....	21
Good Motives.....	21
The Unimportant.....	22
Matter Expressly Admitted.....	23
Well-known Facts.....	23
But not Inferences.....	24
Excluded Matter.....	24
Irrelevant Matter.....	24
Prejudicial Matter.....	25
Matter Excluded by Agreement.....	25
Matter Excluded by Rules of Law.....	26

	PAGE
The Special Issues.....	26
Legal Analysis.....	28
Suggested Exercises.....	30

CHAPTER III. EVIDENCE.

Definition of Evidence.....	32
Proof and Evidence.....	32
Experience and Proof.....	32
Skepticism <i>vs.</i> Implicit Belief.....	33
Kinds of Evidence.....	34
According to Effect.....	34
<i>Prima Facie</i>	34
Conclusive.....	34
Satisfactory.....	34
Competent.....	34
Cumulative.....	34
According to Source.....	35
Testimonial or Direct Evidence.....	35
Weakness of Testimonial Evidence.....	35
Circumstantial or Indirect Evidence.....	36
Real Evidence.....	38
All Evidence Circumstantial.....	38
Evidence in the Courts.....	39
Legal Rules.....	39
Judicial Notice.....	40
Presumptions.....	41
Presumptions of Fact.....	41
Presumptions of Law.....	42
Presumptions in General Argument.....	42
Burden of Proof.....	43
Suggested Exercises.....	44

CHAPTER IV. MODES OF REASONING.

Inductive Reasoning.....	48
The Inductive Assumption.....	49
Two Kinds of Induction.....	49

TABLE OF CONTENTS

7

	PAGE
Perfect Induction.....	50
Weakness and Strength.....	50
Inference.....	51
Weakness and Strength.....	51
Refutation.....	53
Deductive Reasoning.....	54
The Syllogism.....	56
Transformation of the Major Premise.....	57
Identification of the Syllogism.....	60
Rules for the Syllogism.....	61
Fallacies of the Syllogism.....	62
Material Fallacies.....	63
Arguing in a Circle.....	63
Evasion of the Issue.....	63
False Consequent.....	64
Equivocation.....	64
Refutation of Deductive Reasoning.....	65
Suggested Exercises.....	66

CHAPTER V. MODES OF REASONING (Continued).

<i>A Priori</i> Reasoning.....	75
<i>A Priori</i> a Form of Deductive Reasoning.....	76
Refutation of <i>a Priori</i> Reasoning.....	77
<i>A Posteriori</i> Reasoning.....	78
Refutation of <i>a Posteriori</i> Reasoning.....	80
Syllogistic Form of <i>a Posteriori</i> Reasoning.....	80
Analogy.....	80
Refutation of Analogy.....	81
<i>A Fortiori</i> Reasoning.....	82
The Dilemma.....	83
Syllogistic Form of Dilemma.....	84
The Argument from Authority.....	86
The Appeal to Universal Experience.....	87
The Personal Argument.....	89
Reduction to the Absurd.....	91
The Method of Elimination.....	92
Suggested Exercises.....	93

	PAGE
CHAPTER VI. MATERIAL FOR AN ARGUMENT.	
Collecting the Material.....	95
Reference List.....	95
Reading on Both Sides of a Question.....	96
Sifting the Material.....	97
Arrangement of the Material.....	97
The Brief.....	98
The Brief of the Introduction.....	99
The Brief Proper.....	100
Specimen Brief.....	100
Rules for Briefing.....	103
Briefing the Argument of Another.....	104
Preparation of Team Brief and Argument for Debate.....	105
Illustration of Card System.....	106
Suggested Exercises.....	107

CHAPTER VII. THE EXPRESSION OF AN ARGUMENT.

The Place of Rhetoric.....	109
Elements of Persuasion.....	110
Statement of Position.....	112
Conclusion.....	113
Speeches in Rebuttal.....	115
Two Methods in Rebuttal.....	116
Suggested Exercises.....	117

PART II

I. THE HENRY-MADISON DEBATE.

Speech of Patrick Henry on the Adoption of the Constitution..	121
Speech of James Madison on the Adoption of the Constitution.	137
Questions for Analysis.....	148

II. THE FIRST WEBSTER-HAYNE DEBATE.

Speech of Robert Y. Hayne on Foote's Resolution.....	153
Speech of Daniel Webster — Reply to Hayne.....	169
Questions for Analysis.....	193

TABLE OF CONTENTS

9

PAGE

III. THE CALHOUN-CASS DEBATE

Speech of John C. Calhoun on the Ten Regiment Bill.....	197
Speech of Lewis Cass on the Ten Regiment Bill.	211
Questions for Analysis.	236

IV. THE LINCOLN-DOUGLAS JOINT DEBATE AT ALTON.

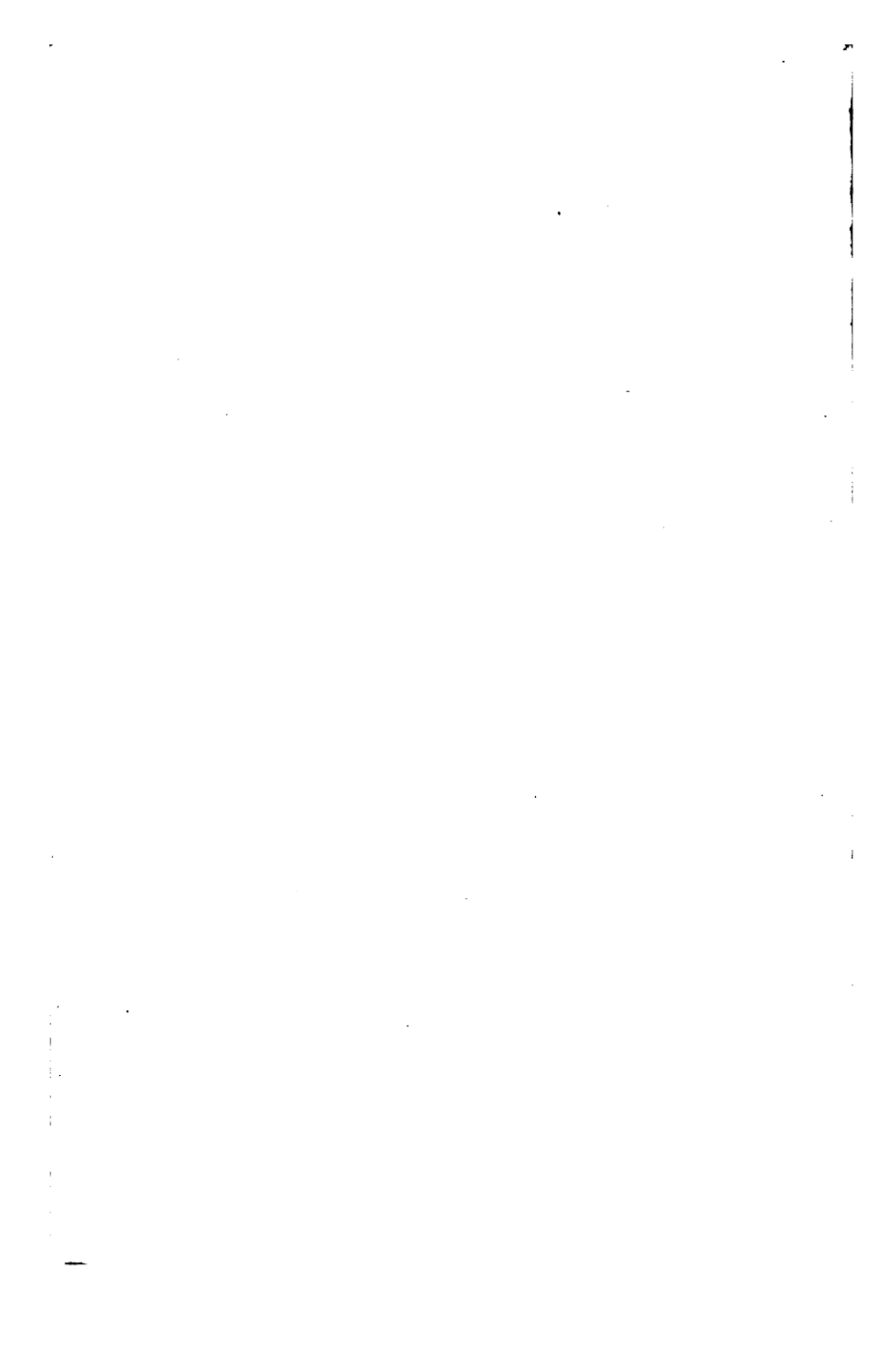
Speech of Stephen A. Douglas at Alton.....	241
Speech of Abraham Lincoln at Alton.	259
Douglas's Rejoinder at Alton.....	287
Questions for Analysis.	296

V. THE BEVERIDGE-HOAR DEBATE.

Speech of Albert J. Beveridge on the Philippine Question.....	301
Speech of George F. Hoar on the Philippine Question.	325
Questions for Analysis.	364

VI. THE INCOME-TAX CASE

Argument of James C. Carter for the Income-Tax Law.....	369
Argument of Joseph H. Choate against the Income-Tax Law..	378
Opinion of Chief-Justice Field on the Income-Tax Law.....	390
Questions for Analysis.	397



Argumentation and Debate

PART I

CHAPTER I

THE PROPOSITION

Why a Proposition is Necessary. The problem of argumentation is to make use of the best means of bringing others to believe or to act as we wish them to believe or to act. Fundamentally, this problem arises out of the desire of mankind to establish the true and to destroy the false; although this noble desire is often vitiated by elements of self-seeking, such as the will to prevail whether we are right or wrong. Whatever the desire may be in a particular case, the problem always involves a knowledge of the ways in which people normally do their thinking, a knowledge of the subject-matter of discussion, and a knowledge of the means by which the subject-matter may best be arranged and presented for acceptance by others.

First of all, however, it is evident that before we can bring other people to believe an idea or to act upon it, we must ourselves know precisely what the idea is. We must not only know it; we must be able to state it in an accurate way. An idea is likely to lie hazy and indefinite in our minds

until we attempt to give it a satisfactory statement for the benefit of others. The very attempt to do this will tend to give the idea clearness of definition for ourselves. "Thoughts disentangle passing o'er the lips." Experience has proved that the best way — because the most definite and most accurate way — in which to state an idea for discussion is in the form of a proposition.

What a Good Proposition Involves. (1) *Terms and Copula.* A good proposition must contain three things. One of these things is some form of the verb "to be," expressed or implied. The other two things are terms or thought-words, one a subject-word, the other a predicate-word; these two being joined by the copula, or asserting-word, "to be," in some form.

No term can be argued. You may argue about a term, that is, you may make propositions about a term, but you cannot argue a term. "Inheritance tax" is a term. You may argue about an inheritance tax, that is, you may make any number of propositions about it. You may explain it, you may illustrate it, you may define it, you may approve or disapprove it, — all this may be necessary and desirable as a preliminary to argumentation. "Inheritance tax" is a good topic for explanation or exposition. It is not ready for argument, however, until something is asserted about it, that is, until a proposition is made about it, such as, "An inheritance tax is desirable." When that is done, it is the whole proposition, and not the term "inheritance tax" alone, that is the subject of the argument. It is the truth of the whole proposition that is upheld or challenged.

(2) *Definition and Interpretation.* The meaning of the proposition must be made clear, through a definition and interpretation of its terms. The proposition, "An inheritance tax is desirable," calls for such preliminary definition and interpretation. What is really wanted? A law is wanted. Then the proposition may be revised to read: "An inheritance-tax law should be enacted."

What is an inheritance-tax law? There are several kinds. Which kind is wanted? A law that provides exemptions? or a law that provides no exemptions? And if one that provides exemptions, exactly what exemptions? Again, do we wish to argue for a law that taxes all inheritances at the same rate? Or do we wish to argue for one that taxes big inheritances at a higher rate than little inheritances? After answering these questions, our proposition may read, "A graduated inheritance tax law, with exemption of all inheritances of a value below \$5000, should be enacted."

Enacted where? and by whom? In states that have other forms of inheritance tax? By the Federal Government? The proposition should state definitely what is meant in regard to these points. The final proposition might read, "A graduated inheritance tax law, with exemption of all inheritances of a value below \$5000, should be enacted by the Federal Congress."

It is evident that before the final statement of a proposition is determined upon, there must be a study of the question sufficient to reveal just what it is that we wish to argue. Exposition of the precise meaning of the proposition in mind, including an interpretation of its terms, —

their definition, their limitations, what they mean, what they do not mean, — is essential not only to deciding what the final form of the proposition shall be, but also to determining whether a proposition which comes to us ready-made is acceptable in the form in which we find it. How much definition and interpretation will afterwards need to be presented in the spoken or written argument will depend upon the clearness of statement in the proposition as finally worded. But some preliminary definition and interpretation will always be necessary.

(3) *Sources of Information.* In searching out the meaning and implication of terms three sources of information are useful: (a) the unabridged dictionaries, (b) common usage and ordinary understanding, (c) books, magazine articles, and newspaper articles which enable one to determine the meaning of a term by tracing the history of the question.

(a) One will naturally turn first to the dictionary and the encyclopedia for the meaning of a term, and will note not only the formal definition but also the quotations illustrating the different uses, applications, and limitations of the term. The illustrative quotations are often more enlightening than the formal definition itself. There are many instances, however, in which the search must be carried further.

(b) What intelligent people generally understand by a term will often serve the purpose when the dictionary fails to satisfy. In a lawsuit between A and B over a contract containing the proposition, "I (A) will attend to all the expenses," A claimed that the expression "attend to"

meant only that he would keep the accounts straight, whereas B contended that the expression "attend to" meant "pay." The Court, in deciding in favor of B, said that in such a controversy the generally accepted meaning of the words must govern; that, in common usage, "I will attend to all the expenses" means "I will pay all expenses."

(c) Sometimes neither the dictionary nor common usage will help us. This is likely to be true of new terms and technical terms. In the proposition, "The use of the block-signal system by railroads should be required by law," the technical term "block-signal system" needs explanation and description. Adequate help cannot be found in the dictionary, and usage has nothing to offer on the subject, because the devices for signaling used by the railroads are things of mystery to most people. We ask, therefore, how did this question arise? and we look in the indexes of the popular and semi-scientific magazines and technical journals for articles, descriptive, explanatory, argumentative, on the subject. A writer in one of our widely read magazines took for his text an Associated Press news item describing a terrible accident on a southern railway, in which the president of the road and two of his friends were killed. (World To-day, Vol. XII, p. 250. "The Block System and Railway Accidents," D. A. Willey.) At the very beginning he found it necessary to explain the various signaling systems. For example, he writes:

The main reason for the remarkably few accidents abroad is that nearly every country compels train service to be controlled by some system of signals which prevents one train from approaching

nearer than a certain distance to another, the track being divided into sections, or "blocks," which but one train may occupy. Every mile of railroad in Great Britain forms part of a block, at each end of which is placed a signal which shows the engineer whether it is clear or occupied by a train. . . . In the United States we have several methods of block signals. . . . Whether these signals are operated by means of the hand lever, the electric key, or the movement of the train, the same general method of procedure is followed. One system is operated entirely by the passage of trains over the rails, and is called the automatic block, because no human operators are needed to work it. The ends of each block are insulated by means of some non-conducting metal. At the farther end of each block is placed what is called a "track battery," from which electric current is furnished, which is carried by wiring to the signals, setting them at safety, caution, or danger, as the case requires. The movement of the current is governed merely by the contact of the forward or rear wheels of the train with the rail connection.

From such articles as this the history of the controversy may be gathered, and the terms may be properly defined and limited. Likewise, in propositions containing such terms as "vivisection," "strike breakers," "suffragettes," "the navy," "church," "state," "labor," we must investigate these terms in order to arrive at a precise definition and a proper limitation of the proposition.

(4) *Fairness of Statement.* The statement of the proposition should be honest and fair, and free from ambiguity. Every one of the terms just quoted has been defined by interested parties in such a way as to prejudice the proposition in their own favor. The term "United States Navy," for instance, appears to need no definition; but unless it be accurately limited, one party, adopting definition by common usage, will be sure to make it mean "fighting ships" only; whereas the other party, deriving a

definition by tracing the history of the subject, will find advantage in making the term include also colliers, repair ships, coaling stations, dry docks, naval schools, and even department clerks at Washington. As every term may be defined, plausibly enough, so as to give it a larger content or a smaller content than it really has, the tendency is universal among disputants to choose the definition most favorable to their point of view. The attempt thus to inject into the definition a prejudicial element is a subtle form of fallacy called "begging the question." No term, however innocent it may look, should be allowed to escape close scrutiny. The course of a whole argument may be determined by the definition put upon one of the terms of the proposition. As a safeguard in formal debate, it is often necessary for the disputants to agree to a certain definition before the statement of the proposition is finally accepted.

(5) *A Debatable Question.* The fundamental idea of argumentation is that two contradictory beliefs about the proposition are held by different groups of people. It would be absurd to try to argue a proposition about which there is no conflict of opinion. The proposition selected for argument should therefore be one that is really debatable. It would hardly be possible to find any one who would at this day deny the proposition, "High schools should be supported by public taxation." That battle has been fought and won by the affirmative in practically all civilized countries. A debatable proposition concerning high schools, however, may easily be framed: for example, "High schools that are supported by public taxation

should be compelled by law to introduce manual training into their courses of study." This is a debatable proposition, for controversy on this question exists to-day.

(6) *A Single Question.* A compound sentence is not a good proposition, for it prevents concentration of the arguments upon a single point, and raises issues that may be independent. The compound proposition, "All saloons should be compelled by law to close at midnight and all day Sunday, and should be taxed \$1000 annually for the benefit of the school fund," would require at least four independent lines of argument to settle the controversy. There is too much in the proposition for a single debate.

SUGGESTED EXERCISES

1. Form propositions for debate from the following: —

- | | |
|-------------------------|------------------------------------|
| a. Labor and machinery. | e. Untaxed denatured alcohol. |
| b. The tramp class. | f. A federal Department of Health. |
| c. An income tax. | g. Women in the professions. |
| d. Foreign immigration. | h. Suffrage. |

2. Criticize one of the propositions, when formed, for clearness of assertion, for limitation, for content.

3. Define and criticize the terms in the proposition that you have just made.

4. Define by the history of the subject, or by common usage, or by the dictionary, the terms in the following: —

a. The use of the forward pass has greatly improved the game of football.

b. The open-shop system should be permitted by the labor unions.

c. The bucket shop is a menace to the financial system of the country.

d. The automatic spark arrester device affords the greatest protection against lightning.

- e. Wages of men and women should be equal.
- f. American women are becoming "masculine."

5. Discuss the relative merits of propositions stated in the affirmative, in the negative, in the interrogative form. In connection with the interrogative form, read Antony's speech in the play of "Julius Cæsar."

6. Criticize the following as propositions for debate:—

- a. Is temperance a duty of the young?
- b. A soft answer turneth away wrath.
- c. Good manners are to be cultivated.
- d. Women should be given the right of suffrage.
- e. Is law a better profession than medicine?
- f. The newspaper is a great popular educator.
- g. There will be no more wars.
- h. Beauty has practical uses.
- i. Races are a necessary part of agricultural fairs.

7. Discuss the following definitions of *argumentation*:—

Argumentation is the process of proving or disproving a proposition. — MacEwan: *Essentials of Argumentation*, p. 1.

It is the act of establishing in the mind of another person a conclusion which has become fixed in your own, by setting up in the other person's mind the train of thought or reasoning which has led you to this conclusion. — Buck: *Argumentative Writing*, p. 3.

Argumentation is the art of producing in the mind of some one else a belief in the ideas which the speaker wishes the hearer to accept. — Baker: *Principles of Argumentation*, p. 1.

CHAPTER II

ANALYSIS

The Conflict of Opinions. The old proverb, "Many men, many minds," implies not only that whenever any proposition is announced opinions thereon may differ, but also that men are likely to retain their opinions, with the result that the average controversy never passes the stage of a mere war of words. "The quip modest," "the reply churlish," "the countercheck quarrelsome," in rapid succession, constitute apparently the sole resource of untrained disputants. It is not that "facts" are lacking; on the contrary, there usually seem to be too many "facts" for easy manipulation, and the result is a wasteful guerrilla warfare that spreads itself ineffectually over a limitless field. What is lacking is a concentration of the forces on either side, a recognition by both sides of the few vital points to be fought for, a simplification of the complex contest through the substitution of a real battle for a hundred small fights. How to find the few vital points, — the points upon which the winning or losing of the case actually depends, — is the problem.

Inevitably, every question will offer its own peculiar difficulties, and, consequently, nothing can take the place of a thorough study of the subject-matter of each question as it arises, including an acquaintance with the best that has been said in the past on both sides of the controversy.

Such a study will reveal some things that may be taken for granted without mention, some things that may be expressly admitted, some things that must be excluded. When these three classes of things have been discovered and put aside, there will remain the matter that is pertinent, significant, and vital to the question, — the special issues so called.

If a person is about to build a house in a rough spot, the first process must be destructive, — cutting down trees, removing débris, digging out earth and rock to make room for the basement and the foundation. The place must be cleared, the ground for the site leveled, the excavation made, before constructive work can begin.

Matter that may be Tacitly Granted. (1) The analysis of any subject with reference to a given proposition will show that certain things must be tacitly assumed to be true if any progress in the argument is to be made. With reference to the proposition for an income tax, for instance, both sides will take for granted the probability that such a tax, when collected, will be expended just as wisely, or just as foolishly, as other taxes; and neither side will be likely even to mention so obvious a matter, or try to base an argument on the way in which the tax, when collected, is to be spent. Affirming the obvious is the vice of all discourse; it is especially wasteful in the kind of discourse that we are studying, for it takes time from more important things.

(2) Usually, also, time is saved and progress towards the special issues is hastened by tacitly granting good motives to an opponent. Bad motives can rarely be proved and are always hotly disclaimed. Bad reasoning, however, is a charge always to be endured with equanimity, since the

fault is universal, and indeed is implied by the very fact of debate. In a recent debate on the proposition, "The Philippines should be granted immediate independence," much time was wasted because the affirmative imputed bad motives to the McKinley administration, and the negative hastened to defend the motives of that administration in acquiring the islands. It is true that bad motives, if proved, would be relevant to the main proposition; but the real issues involved in the proposition as stated are not historical, but are present-day issues; namely, (a) Are the Philippines ready for self-government? (b) What would be the effect upon the United States and upon the Philippines if immediate independence were granted? If the affirmative had tacitly granted good motives, but had imputed bad judgment, the real issues involved in the proposition might have been reached earlier in the discussion.

(3) How much, in a given case, shall be tacitly granted to an opponent is not primarily a question of truth; it is a question of economy. In order to reach the main issues on which the case actually rests, and in the discussion of which the real truth of the matter is to be found, the disputant may properly refuse to be delayed by minor statements even though he knows these to be false. An opponent who is conscious of inability to meet the real issues will always seek to delay discussion of these by presenting numerous side issues that are not vital. It follows that some matter may be tacitly granted because it is true, and some because, whether true or false, it is not worthy of serious attention.

Matter that may be Expressly Admitted. Besides the matter that may be tacitly granted either because it is true or "for the sake of the argument," — that is, in order to hasten to more important issues, — certain things may be expressly admitted.

Well-known facts must be expressly admitted. In opposing a proposed reform in education, for instance, the case cannot rest upon the assertion of perfection in present systems; the need of improvement must be admitted, and the efficacy of the particular measure proposed for accomplishing the reform desired must be denied. In like manner, when a long-established institution or a prevailing custom is attacked, it would be worse than useless to deny its benefits in the past; the case must rest upon the promise of greater benefits to come from the change that is proposed. So, too, with social and economic questions, and questions of finance and administration: there will always be evils to be admitted and benefits to be asserted. No one can discuss any question of taxation, for example, without admitting inequalities and lack of equity in existing systems. One may admit sympathy with those suffering from existing evils without concurring in a particular method of relief; for against new proposals, specific objections may always be found. Most of these objections will fall under one of two general heads: (a) The innovation proposed introduces a new and untried principle with consequences unknown; (b) The innovation proposed will not cure the evils admitted, but will lead to greater evils than those that it is intended to cure.

While obvious facts must be admitted, the trained dis-

putant will always distinguish between fact and inference from fact. One may admit a fact and deny the inference which an opponent seeks to draw from the fact. More than one inference from the same fact will always be possible. When a second inference is pointed out, the question is on the relative plausibility of the inferences, and the relative strength of the proof that can be brought to their support respectively. A fact is not a proof; it does not become a proof until an inference is drawn which puts the fact into the relation of cause and effect with the proposition. One may admit facts with impunity if convinced that an opponent's inferences from those facts lack truth, or likelihood of truth. Lincoln always sought to admit as many of his opponent's facts as he could admit truthfully; he always, however, made his own inferences, and they were not usually the inferences which his opponent had made. It is the instinct of weakness to adopt a rule never to admit a fact brought forward by an opponent. The fact, if true, should be admitted, and then explained in another way.

Matter that must be Excluded. Four classes of matter must be excluded: (1) irrelevant matter, (2) prejudicial matter, (3) matter excluded by agreement, (4) in legal argument, matter that is excluded by the rules of law.

(1) Matter that is discovered to be wholly irrelevant will, of course, be immediately dropped; the real difficulty is to recognize matter as irrelevant, and even more often the difficulty is to distinguish between the more and the less relevant. Practically, the question is one of relative importance: will it pay to discuss point X at the risk of failing to do full justice to point Y or point Z? The only

answer to such a question is to be found in a thorough knowledge of the subject-matter with which the proposition deals, and a careful scrutiny of the proposition itself in order to see where the emphasis should be placed.

(2) Prejudicial matter is usually excluded, if possible, by a careful wording of the proposition. The proposition, "Resolved, that self-government should be restored to the Philippines," was rejected, when offered as a question for intercollegiate debate, because the word *restored* assumed the truth of matter in dispute — whether the Aguinaldo republic was a real and efficient republic or a republic only on paper. If not discovered in the wording of the proposition, prejudicial matter should be sought in the definition of the terms of the proposition (see chap. I, p. 13), or in the way in which the proposition is arbitrarily limited by one side or the other. In a debate on the proposition, "Resolved, that an income tax is desirable as an element in the American system of taxation," both sides admitted that the present system is unjust and iniquitous, and the affirmative proposed as a remedy a tax to be levied only on the incomes of corporations. The attempt thus to limit the proposition arbitrarily by identifying "income tax" with "tax on the incomes of corporations" failed when the negative presented the usual definition of "income tax" as "a tax on *all* incomes above a certain exemption." This case is interesting also as a skillful attempt to "shift the ground" and to exclude the real point at issue from the discussion, for the real point at issue is contained in the little word *all* in the definition just given.

(3) It is often necessary for both parties to a controversy

to agree to exclude certain matter. Thus, before the proposition, "Resolved, that an inheritance tax law should be adopted by Congress," could be satisfactorily debated, it was necessary to exclude the decision of the Supreme Court in the case of *Knowlton v. Moore*, 178 U. S. 41, holding that a progressive inheritance tax law is constitutional. Likewise in the popular discussion of the proposition for an income tax, constitutional objections have usually been waived by agreement. Whatever both sides to a controversy are willing to concede or to waive is so much gained for the discussion of the real points at issue.

(4) Matter that is excluded by the rules of law is illustrated on page 39.

The Special Issues. When all of the granted, admitted, and excluded matter has been put aside, in the study of a question, there will remain the matter containing the special issues upon which the controversy rests. It must not be assumed, however, that the special issues go unperceived until the matter to be granted, admitted, and excluded, is detected. From the first, when reading and reflection begin, and when the material of the subject slowly arranges itself in reference to the proposition, the two processes, of finding the special issues and of setting aside matter to be excluded, go on together. Indeed, exclusion of material would be impossible without some notion of the special issues at the very outset. As a matter of fact, a person seldom comes to the study of any proposition without having in mind a tentative *theory of the case* which he hopes will prove true, or which he fears may prove true. This theory of the case will be revised, as reading and reflection

proceed, in the light of the new facts and inferences discovered, and of unexpected objections encountered which seem valid. The wording of the proposition will sometimes give a hint of the special issues to be looked for. State the same proposition in a different way, and a change in emphasis is at once revealed. The reason for the particular wording adopted, when once discerned, will furnish a clue to the special issue sought. Often the issues are discovered in discussions preliminary to the immediate controversy. Thus Stephen A. Douglas chose the issues for his great series of debates with Abraham Lincoln from a speech which Lincoln had made before the Republican convention that had nominated him for the United States Senate. In his Chicago speech of July 9, 1858, just prior to the campaign for the senatorship, Douglas said:

I take great pleasure in saying that I have known personally and intimately for about a quarter of a century, the worthy gentleman who has been nominated for my place, and I will say that I regard him as a kind, amiable, and intelligent gentleman, a good citizen and an honorable opponent; and whatever issue I have with him will be of principle and not involving personalities. Mr. Lincoln made a speech before that Republican convention which unanimously nominated him for the Senate, — a speech evidently well prepared and carefully written, — in which he states the basis upon which he proposes to carry on the campaign during the summer. In it he lays down two distinct propositions which I shall notice, and upon which I shall take a direct and bold issue with him. . . . Mr. Lincoln asserts, as a fundamental principle of this government, that there must be uniformity in the local laws and domestic institutions of each and all of the states of the Union. . . . Now, my friends, I must say to you frankly, that I take bold, unqualified issue with him upon that principle. I assert that it is neither desirable nor possible that there should be uniformity in the local institutions and domestic regulations of the different states of this Union.

The other proposition discussed by Mr. Lincoln in his speech consists in a crusade against the Supreme Court of the United States on account of the Dred Scott Decision. On this question, also, I desire to say to you unequivocally, that I take direct and distinct issue with him. . . . Thus, you see, my fellow citizens, that the issues between Mr. Lincoln and myself as respective candidates for the United States Senate, as made up, are direct, unequivocal, and irreconcilable.

In this manner one of the greatest debaters of the country carefully analyzed the situation to find the special issues in preparation for a memorable series of debates. The only reason why his shrewd analysis failed to show the really vital issue — the right and wrong of slavery — was that his nature apparently could not appreciate that side of the question. A reading of the debates would show what advantage this statement of the issues gave Judge Douglas in the early debates, before Lincoln really came to his own.

Legal Analysis. The above process of finding the special issues is a part of every suit in a court of law. A definite case may be taken to illustrate the whole matter: The farms of Hill and Lane adjoined. A dispute arose over the line fence, which stood so much in need of repair that Hill's stock continually wandered into Lane's field. Both parties were negligent. A gate led from Lane's field into a highway, and the highway crossed a railroad track a few yards distant. Lane willfully, wantonly, and maliciously opened and kept open the gate leading into the highway near the railroad track. A colt belonging to Hill strayed into Lane's field, through the gate, on to the track, and was killed by a train. Hill sued Lane for two hundred dollars, the alleged value of the colt.

When the defendant demurred to the petition or com-

plaint in this case, he admitted, for the purpose of the demurrer, that all points were well pleaded, except two. Lane denied that he was legally liable for leaving his gate open even if his motive was malicious, and also denied that the colt was worth two hundred dollars. These were the only two points remaining at issue after granted matter, admitted matter, and excluded matter had been put aside.

(1) In the first place a number of items were tacitly granted. So evident were they that neither side took the trouble to mention them. It was not mentioned in the pleadings that the colt had been alive, or that a train would kill a colt by running against it, or that the colt could walk through the open gate.

(2) It was expressly admitted by both parties that both were negligent, that the fields adjoined, that the fence was out of repair, that the gate was left open, and that the colt was killed by a train. Any discussion of these points was thereby precluded.

(3) Certain allegations were excluded from Hill's petition by the rules of law. It could not be properly alleged, for instance, that Lane had been guilty of previous misdemeanors, that he said he left the gate open maliciously, or that one neighbor told another that Lane had left the gate open for the purpose of killing Hill's colt.

(4) Out of the whole number of allegations there were left but two in dispute, and these were flatly denied by the defendant, — namely, that there was any legal liability on the part of the defendant for opening the gate, and that the colt was worth two hundred dollars. These two points made up the special issues.

It may be noticed further that these two points are not of equal value. If the plaintiff failed to prove that there was any legal liability he would lose the case entirely. But if, when the case went to trial, the defendant succeeded in proving that the colt was not worth two hundred dollars he might still be liable for a less sum. When a number of points make up the special issues, judgment must be exercised in emphasizing the most important.

SUGGESTED EXERCISES

1. Analyze one of the following sufficiently to state the granted matter, the admitted matter, the excluded matter, and the special issues.

- a. Freedom of the press is necessary in a true democracy.
- b. The number of immigrants should be further restricted.
- c. The United States should enact national incorporation laws.
- d. The college course should be reduced to three years.
- e. There should be different curricula of studies for men and for women.

2. Find the special issues in one of the debates printed in this book.

3. Analyze the following case carefully for the special issues:—

The action was brought by the administrator of J. S., deceased, to recover \$10,000 damages sustained by his next of kin by reason of his death; the suit being based upon the theory that decedent's death was caused by the wrongful act or neglect of the defendant railroad company.

The declaration, in substance, avers: That the defendant maintains and operates an electric railroad to Atlantic City; that the electric current employed in the operation of the road is conducted and conveyed by means of a third rail, which is at all times charged with electricity; that the rail is at all times uncovered and exposed, and no

protection whatever from the electrical current is furnished to objects coming in contact therewith; that the defendant's railroad crosses a large area of meadow land which is frequented and traversed by many persons engaged in hunting, fishing, and divers other pursuits; that at the time of decedent's death there were no signs, warnings, signals, fences, or other devices to give notice of the dangerous character and condition of the railroad; that the decedent, a lad thirteen years of age, while traversing this meadow land, came in contact with the third rail by stepping thereon while attempting to cross the railroad near its intersection with the old meadow turnpike, and that by the contact he was immediately killed.

CHAPTER III

EVIDENCE

Definition. In its broadest sense, evidence includes everything that is submitted for the purpose of proving or disproving a proposition. In a legal sense, it means everything that is submitted to court or jury in accordance with the rules of law. Except by agreement, in general debate or argument there are no restrictions on what may be used as evidence, but the courts protect litigants from possible fraud and injustice by limiting the kind and character of evidence that may be introduced.

Proof and Evidence. There is this difference between proof and evidence: evidence is the means; proof is the end. Evidence becomes proof when a pertinent inference is drawn from it. There can be evidence without proof, but there cannot be proof without evidence. The nearer the evidence comes to excluding every possible inference or conclusion except the one desired, the more absolute is the proof. The amount of evidence necessary for this degree of proof depends not only upon the nature of the fact to be proved, but also upon the age, experience, and character of the persons who are to be convinced.

Experience and Proof. The one who attempts to establish a fact or a conclusion in the minds of others must take into consideration their experience and their mental attitude. Terms must be made plain, past training must

be reckoned with, and known prejudices must be overcome. It is easy for the parent to prove to the three-year-old child that Santa Claus makes his yearly trip with reindeer and sleigh, but it is not so easy for a young man to prove to his grandfather that he needs a thousand dollars a year to attend college. Lacking reason for doubt, the child at three is easily persuaded; the man of sixty remembers that he went through college on less than three hundred dollars a year. Experience must sometimes be provided in order that belief may follow. For example, a judge and a jury refused to believe that a prisoner had escaped by a small grating until they themselves had seen a man go through the same opening. Certain classes of people will readily accept a statement because of their special training or experience. It is comparatively easy to prove to a class in physics that an ice boat, driven solely by the force of the wind, can be made to travel faster than the wind. To establish the same proposition for a crowd of laborers would require much more evidence; whereas, little or no evidence would be necessary to convince a crowd of "ice-boaters." It is not strange that twenty-five years ago people laughed at the idea of horseless carriages, wireless telegraphy, and aerial navigation. In general, people accept or reject information only so far as it coincides with their own experience or the authenticated experience of others.

Skepticism vs. Implicit Belief. At one extreme there is implicit belief in the testimony of others — the belief of the child until he learns by experience that it is not safe to accept human testimony without discrimination. At the

other extreme is the skepticism of the aged, who, because of long experience, distrust everything that does not coincide with their experience. Neither extreme can be safely followed. Although the experience of the individual and his own deductions from circumstances must temper the information which he receives from others, there must also be reliance on authenticated testimony. Absolute skepticism is as fatal as implicit belief.

Kinds of Evidence. (1) According to its effect upon the mind, evidence has been divided into classes as follows: (a) *Prima-facie* evidence, that which would prove the fact if no other evidence were adduced; account books are *prima-facie* evidence of a sale and delivery of goods. (b) *Conclusive* evidence, or that which cannot be disproved, as mathematical demonstrations and the various natural laws. (c) *Satisfactory* evidence, or evidence sufficient to prove the fact beyond reasonable doubt, for a disinterested person. (d) *Competent* evidence, or that which the nature of the case requires; for instance, if a contract is to be proved, the original writing is competent, but if the original has been destroyed, a copy is competent. (e) *Cumulative* evidence, which means facts of the same kind to the same point; thus, if A is charged with using false measures, and if B, C, D, and E in turn testify to having found shortages in the weight of goods purchased from A at various times, their evidence is cumulative, because it is all of the same kind, and because it all tends to prove the one thing alleged.

It is clear that this division of evidence is not strictly logical, for the terms are not mutually exclusive; but they

are in general use, and a knowledge of their significance is helpful in determining the weight and the relative importance of evidence. Moreover, they point to an underlying principle of relevance, which may be stated thus: The evidence should be the best of which the case is capable. No principle is more often or more flagrantly violated in the looseness of general debate. Unauthenticated statements in newspapers, and incomplete and misleading statistics in magazines, are frequently offered by debaters as evidence on points to which acknowledged authorities have testified, and on which complete official statistics and reports are available.

(2) According to its source, evidence has been divided into testimonial, circumstantial, and real evidence.

Testimonial or Direct Evidence comprises both the oral and the written statements of witnesses. Its value depends upon the veracity, accuracy, and intelligence of the witness. The greater the number of careful witnesses who agree, the stronger the evidence becomes.

Weakness of Testimony But however accurate the witness may be, testimonial evidence has its weaknesses. In the first place, no two persons see things in exactly the same way; their points of view differ. Details which are important in the consideration of one may be unnoticed by another. In case of excitement attending the observation, radical differences in testimony may arise. Saxe's poem, "The Blind Men and the Elephant," has its application for those who are possessed of the five senses. Second, no two people relate things in exactly the same manner. Accurate as language may be, and carefully as words may

be selected, it cannot be a perfect medium for the transmission of thought. The greatest misunderstanding may result, though words apparently familiar are used. Third, few witnesses can be absolutely impartial. The tendency to color facts one way or the other is universal. However unprejudiced one tries to be, he may yet unconsciously modify the plainest facts while he is relating them. Fourth, memory is unreliable. No matter how short the time between the observation and the testimony, important details may be forgotten. Moreover, circumstances may impair an otherwise good memory. Fifth, the degree of truthfulness in a witness is never an assured fact. A witness may appear to be telling a straightforward story when, in reality, he is uttering basest falsehood. The man who tells a story with absolute assurance as to every detail is the one most likely to be in error.

Circumstantial Evidence is inference from facts which have been satisfactorily proved. It is indirect proof of a fact, and is thus distinguished from direct testimony to the fact. Its basis is the experience of men; its reliability rests on the statement that facts never lie. But though facts do not lie, circumstantial evidence is often weak, because men's deductions from facts are frequently wrong. A fact may be true, but the connection between it and the conclusion inferred from it may not exist. Unwarranted inferences from facts are common. A rushes home and exclaims, "B passed me on the street to-day in the most indifferent manner and did not speak! He must be angry." But B is innocent; for not only was the sun shining full in his face when he passed A, but he was

trying to recall what he had missed in his last history examination.

This likelihood of an incorrect inference is also illustrated by the conversation which took place between two friends while riding to work one morning some months after a presidential election. During the intercourse A asked B for whom he had voted. B promptly replied that he had voted for McKinley, because he had been told that if he voted thus good times would result. The inference was clear in his own mind that he had voted correctly, because good times followed the election. Thereupon A asserted that he had voted for Bryan for the reason that some one had told him good times would result if he did so, and he, too, pointed triumphantly to the prevailing good times.

Circumstantial evidence is conclusive only in so far as it excludes every other known reasonable inference. A recent case will illustrate.

A burglary had been committed. Toe marks were found on the window sill and footprints appeared in the soil below. A notebook containing the name A. L. Ream was picked up in the front room upstairs. An addressed envelope containing the sentence, "Mail the money to me at Pittsburg," was found with the notebook. The man of the house had been aroused in time to see a person dressed in a gray cap and light coat hurrying from the room. Two watches bearing the initials G. L., five rings, and a case of silverware marked S. T. were missing. Charles Miller, alias A. L. Ream, an ex-convict, was arrested at Pittsburg. His wife had pawned the watch and rings in a local pawnshop, and a pawnbroker at Pittsburg stated that the silverware had been left at his shop by a man who wore a gray cap and light coat. The footprints were the exact counterpart of Ream's foot, and a local storekeeper testified that he had seen Ream use the notebook for an account at his store.

The circumstantial evidence here is complete and satisfactory, for human reason can conceive of no other conclusion than that Ream stole the valuables. The facts exclude every other inference.

But circumstantial evidence is not often so complete as this. Suppose the only facts were, that the man of the house had seen a stranger in light cap and coat hurrying out; that a twenty-dollar bill was missing from the room, and that a man dressed in light cap and coat, with a twenty-dollar bill in his pocket, was arrested in Pittsburg. Other inferences than that he is the guilty party are not excluded, and the chances are that some other inference is the correct one, and that the man arrested in Pittsburg did not commit the crime.

Real Evidence is the exhibition of a material object to judge or jury. Every criminal trial has a long list of exhibits. Articles of all kinds and sizes are presented. Weapons, stolen goods, defective appliances, clothing, books, pieces of machinery, — in fact, every conceivable object that can be carried is brought into the court room; and when the objects are too large to be moved the jurymen may be taken to visit the scene in order that they may locate objects and understand conditions. In the consideration of many questions such evidence is the best that can be had.

All Evidence Circumstantial. Although the divisions of evidence are apparently well defined, it is possible to reduce all forms to the circumstantial class. A testifies that he saw B kill D by striking him with an iron. This is testimonial evidence, but in a strict sense it is yet cir-

cumstantial; for A merely saw certain facts from which he inferred that they were the cause of D's death. Yet, although it is extremely improbable, D may have died a natural death. Again, A says he saw D rob a bank. What he actually saw was a man whom he identified as D. No matter how well he may have known D, it is possible that he drew an improper inference from the observed facts.

Evidence in the Courts. The production of evidence in the courts is limited by many rules and restrictions. This is necessary, not only for fairness, but also for preserving clearly the issues and for preventing long and tiresome litigation. The general debater will profit by noting some of the legal rules and restrictions: (1) Except in a few cases where character is the issue, a man's character may not be shown in a trial. (2) A man cannot be convicted of a crime upon the testimony of one interested witness unless the commission of crime is proved and the testimony of that one witness is corroborated by other evidence. (3) A man's confession of crime will not be admitted if that confession is secured by threats or duress or ~~undue~~ promises of mercy. (4) A writing may not be introduced unless its authenticity is first established. (5) Except in a few extraordinary cases hearsay evidence will not be admitted. (6) One who testifies to the contents of a document must have read it, and not merely have heard it read. (7) A witness may be impeached by showing bias, insanity, intoxication, or prior inconsistent statements. (8) Finally, the Court reserves the right to determine the admissibility of evidence. If the evidence is

decidedly unfair or shocking to the senses, or is immaterial, it may be ruled out.

Merely to read these rules should make the general debater more careful in the management of his arguments. But some of them should be transferred without change to the arena of general debate; they would have great value there also. For instance, the general debater sometimes makes an issue of personal character (Rule 1) when the real issue is not a man but a policy. This is the old fallacy of attacking some more or less obnoxious person connected with an issue, when unable to argue the issue itself. The general debater, also, is often satisfied with a single authority (Rule 2) when he should look further in order to find either more authorities or corroborative evidence of another kind. The right of an authority to speak as an expert should always be established in a general debate, as required by the courts in the case of expert testimony; yet this important principle is too often forgotten by the general debater. The principle that governs the introduction of manuscript letters from more or less eminent people into a debate is that stated in Rule 4. The practice is rarely necessary, or effective, since it has some of the earmarks of trickery. The other legal rules cited are more or less directly applicable to general debate, and all of them taken together enforce the great principle of relevance: There must be a logical connection between the fact to be proved and the evidence produced.

Judicial Notice is a law term which includes all facts or circumstances that are accepted as true without proof. Public statutes, treaties, international laws, departments

of government, courts and court records, days of the week and month, the common meaning of words, scientific facts which are universally accepted, geographical and historical facts, common customs and matters of general knowledge, — all are judicially noticed by the courts.

The term applies in a broader sense to argument in general, for in the average discussion much more is taken as true without proof than is judicially noticed by the courts. To illustrate: In the ordinary debate state laws would be accepted without proof, whereas courts often require proof of state laws. In a general argument a signed instrument would be accepted, but in a law court the signature must be proved.

Presumptions. A presumption is an inference, with the added element that the inference has proved to be true so long and in so many cases that it rises to the level of accepted fact until disproved by evidence to the contrary. Presumptions are classified as (1) of fact and (2) of law.

Presumptions of Fact. Those inferences which will stand as true if no opposing proof is produced are termed presumptions, or, more accurately, inferences, of fact. When the hunter chains a cub to a tree in order to take captive the old bear, he is using a presumption of fact — the presumption of maternal affection in the parent. When the mother, whose boy is away from home, tells a friend that her boy is upright and industrious, she has used the presumption of continuance in a condition or habit. King Solomon's method of determining which woman was the child's mother is often cited as a presumption of fact.

(See 1 Kings 3: 16-18.) Continuous and oft-repeated experiences make possible these inferences of fact.

Presumptions of Law are inferences of fact which are accepted by the courts. They are divided into two classes, Conclusive and Disputable. A conclusive presumption of law is one upon which the court will hear no evidence. For example: the presumption that a child under seven years of age cannot commit a crime is conclusive. When a debt has run for the statutory period of limitation, it is no longer an obligation which the law will enforce. The intent to commit murder is conclusively inferred from the deliberate use of a deadly weapon without cause. Although the term is in general usage, strictly there cannot be a conclusive presumption. The meaning is simply that, given the existence of one fact, — a child under seven years of age, — the law absolutely precludes the parties from showing that a second fact exists, — that the child did or did not commit a crime. A disputable presumption, on the other hand, is one that may be overcome by evidence. The presumption of innocence is disputable; the presumption that a man is dead who has been absent and unheard of for a period of seven years, is disputable, and until the full seven years have elapsed he is still presumed by the law to be alive.

Presumptions in General Argument. The term "presumption" applies in a larger sense to general argument. More inferences are accepted as true in general argument than are recognized by the courts, and these accepted inferences become presumptions of fact. The debater who would attack an existing condition or institution

recognizes this and prepares to refute the presumption in favor of that which is in existence. The presumption of innocence, of authenticity of writings, of validity of acts and of laws, of continuance in an existing state, of the natural consequences of acts, of receipt of letters which have been mailed, and of ownership, are made use of in general debate as well as in courts of law. In its broadest usage, a presumption is a "common-sense" inference from facts, and is accepted as true until evidence is introduced to disprove it.

Burden of Proof. Before any enterprise gets under way some one must feel the direct responsibility of taking the preliminary steps, such as securing means, buying equipment, hiring workmen, etc. Likewise, before an argument can go forward, one side must feel the obligation of establishing the given proposition by means of proof. This obligation is the Burden of Proof.

The general statement that the affirmative has the burden of proof is true. But the statement that the burden of proof shifts is not true. To clear up the matter it is necessary to distinguish between the burden of proof and the duty of producing evidence. The burden of proving a proposition, of winning or losing, always rests with the affirmative, and is assumed at the outset. When the affirmative asserts a proposition and produces evidence in support of it, the negative must then produce evidence or lose. The burden of final proof still rests on the affirmative, but the duty of producing evidence has shifted to the negative, for it must meet the evidence of the affirmative. The burden of producing evidence, then, is always upon the party

who would lose if no further evidence were produced, and it may shift from one to the other. At the outset the burden of proof and the duty of producing evidence are both on the affirmative, but as soon as the affirmative has made a prima-facie case the duty of producing evidence falls upon the negative.

It will be clear, after a moment's thought, that this burden of proof differs for the lawyer and for the general debater. The lawyer is hedged in by all the technicalities of legal procedure. He may lose his case by a simple mistake in the form of the indictment, although his argument may be convincing. Or the accused may go scot-free because the evidence against him does not reach "beyond a reasonable doubt," while the community in which he lives may suspect him still. It is this suspicion, this common judgment, which lies beyond the scope of legal proof, that the general debater must meet. "The burden of proof which he will try to shift will not be the technical burden of proof, but the real burden of doubt upon the minds of his hearers."¹

SUGGESTED EXERCISES

1. Write a letter home proving that you ought to have six hundred dollars a year to go through college.
2. Show a self-made business or technical man that a course in college is an advantage; or that he should send his son to college.
3. Convince an old country storekeeper that he should buy a cash register; or a dairyman that he should buy a

¹ Alden, *Art of Debate*, p. 49.

cream separator; or an old-fashioned housewife that she should buy a patent sweeper.

4. Your mother is opposed to fraternities and sororities. Show their merits.

5. Defend dormitory life.

6. Select a Sherlock Holmes story. Discuss the accuracy of the inferences.

7. Bring to class from your own experience or observation a case where circumstantial evidence has been used to prove a fact or convict a criminal. Discuss its conclusiveness.

8. Write a brief argument upon one side of the following proposition: Circumstantial evidence is stronger than testimonial evidence.

9. The following facts have been brought out: The accused was a janitor in a large hotel. One of the guests was careless in leaving a trunk, containing money, unlocked. At one time a five-dollar bill was taken, at another time a ten-dollar bill, and again a silver dollar. The proprietor, devising a scheme to catch the thief, left marked coins in the trunk each day. After a considerable amount of money had been taken from the trunk, the accused was caught passing one of the marked coins at a store. Defend the prisoner by a written argument.

10. Compare with the text the following paragraphs by Huxley, on the distinction between circumstantial and testimonial evidence:

The evidence as to the occurrence of any event in past time may be ranged under two heads which, for convenience' sake, I will speak of as testimonial evidence and circumstantial evidence. By testimonial evidence I mean human testimony; and by circumstantial evidence I

mean evidence which is not human testimony. Let me illustrate by a familiar example what I understand by these two kinds of evidence, and what is to be said respecting their value.

Suppose that a man tells you that he saw a person strike another and kill him; that is testimonial evidence of the fact of murder. But it is possible to have circumstantial evidence of the fact of murder; that is to say, you may find a man dying with a wound upon his head having exactly the form and character of the wound which is made by an ax, and, with due care in taking surrounding circumstances into account, you may conclude with the utmost certainty that the man has been murdered; that his death is the consequence of a blow inflicted by another man with that implement. We are very much in the habit of considering circumstantial evidence as of less value than testimonial evidence, and it may be that, where the circumstances are not perfectly clear and intelligible, it is a dangerous and unsafe kind of evidence; but it must not be forgotten that, in many cases, circumstantial is quite as conclusive as testimonial evidence, and that, not unfrequently, it is a great deal weightier than testimonial evidence. For example, take the case to which I referred just now. The circumstantial evidence may be better and more convincing than the testimonial evidence; for it may be impossible, under the conditions that I have defined, to suppose that the man met his death from any cause but the violent blow of an ax wielded by another man. The circumstantial evidence in favor of a murder having been committed, in that case, is as complete and as convincing as evidence can be. It is evidence which is open to no doubt and to no falsification. But the testimony of a witness is open to multitudinous doubts. He may have been mistaken. He may have been actuated by malice. It has constantly happened that even an accurate man has declared that a thing has happened in this, that, or the other way, when a careful analysis of the circumstantial evidence has shown that it did not happen in that way, but in some other way.

11. From your own experience write out an illustration of a mistaken inference.

12. Find illustrations of inference of fact. Write them out.

13. Determine how much argument would be necessary to make out a prima-facie case for the following:

- a. A claims \$500 due him from B on a promissory note.
- b. A is indicted for horse stealing.
- c. A clerk sues his employer for \$100, two months' salary.
- d. Financial difficulties are imminent.
- e. A copied in an examination.

14. The proposition is, A system of self-government should be established in the Philippines. The affirmative has made the following point: It has always been a principle of our government to leave to the people the problem of administering their own affairs in so far as they are capable. Has the duty of producing evidence shifted? Why or why not?

CHAPTER IV

MODES OF REASONING

THERE are certain well-defined modes of reasoning — both correct modes and faulty modes — which are universal. These modes of reasoning are described by Logic, which furnishes the absolute assurance that whatever is valid in one person's mode of reasoning is valid for that person and for everybody else of normal mind. Logic thus enables the debater to test with certainty his own arguments, and to detect flaws in the arguments of his opponents.

Inductive Reasoning. All our knowledge arises from experience. The process begins at birth. The young ~~child~~ drinks in knowledge through all the channels of his five senses. But any appreciable accumulation of facts in the mind is based on memory. Memory gives form to past experiences and classifies them. It is memory that tells one he has previously had a certain experience under certain conditions, and that he has always had such experiences under similar conditions. Thus, memory gives the basis for generalization. The method of basing a judgment upon a number of past experiences is called inductive reasoning. It is by this method of reasoning, unconsciously followed, that we all learn early in life to make the generalization, Fire burns. By the same method astronomers, having observed that Mercury revolves

around the sun from west to east, and that Venus, the Earth, Mars, Jupiter, Saturn, Uranus, and Neptune, do the same, conclude that "all the principal planets of our solar system revolve around the sun from west to east." It is a generally accepted conclusion that the attraction of bodies varies directly as their masses and inversely as the square of their distances. If the grounds for this conclusion were asked, the answer would be: It is true because thousands of trials have been made and in every case the law has held true. By inductive reasoning a conclusion is drawn regarding a class of objects when all or a number of them have been examined.

The Inductive Assumption. Inductive reasoning assumes two things: (1) That such a thing as a class can and does really exist; that what is true for several things that are alike in some essential particular is true of other things that are usually classified with them. (2) That under the same conditions Nature always acts the same; given the physical conditions that will create fire, there will be fire, and that fire will burn.

Two Kinds of Induction. There are two kinds of inductive reasoning: (1) the kind in which all the members of the class under consideration are examined before the generalization is made; (2) the kind in which a generalization is made while some of the members of the class remain unexamined. Before the statement was made that "all the principal planets revolve around the sun from west to east," all eight of the principal planets of our solar system were examined; or, perhaps, in buying peaches we tested every peach in the basket and found them all ripe and

unspecked. When every member of a class is examined before the generalization is made, the process is called Perfect Induction. But when the conclusion extends beyond the data upon which it is based, for instance, when less than all the peaches in the basket are examined before purchasing; when a man asserts that the attraction of bodies varies directly as their masses and inversely as the square of their distances, though his own experience is but a drop in the great ocean of physical phenomena; when an astronomer declares authoritatively that all minor planets revolve from west to east, though it is possible that next year several new ones may "swim into his ken," — the process is called Inference.

Perfect Induction is nothing more than a record of what has been directly learned. It calls attention to the existence of a class; and it affords an economical device for avoiding the specific mention of all the individual cases, but it does nothing more for us. Instances of Perfect Induction are few, because time will not permit us to examine every member of a class, or because not all the members of a class are easily accessible.

Weakness and Strength of Perfect Induction. A perfect induction is not so easy to make as one might suppose, for there is always the danger of inaccurate observation. A man who buys a carload of horses will of course try to inspect each one carefully; but he may err in his generalization about the carload because he does not know how to inspect horses, or because, though he does know how, he is in this instance prevented from seeing accurately. A novice may examine all the horses several times, and at

last his generalization about them may be worthless. An expert may appear to glance hastily at them and yet his decision will be reliable. The fact is that we observe scientifically only what we have been trained to observe. There is no such thing as a power of general observation. The observer of the stars may be utterly untrustworthy as an observer of the habits of animals. An observer of flowers may miss all geological phenomena in the field through which he is passing. The weakness of perfect induction is always a weakness in training for a specific field of observation. The strength of perfect induction is always the result of expert training for a specific field of observation.

Inference. When a generalization is made from less than the whole number of cases included in the class, we have what is called inference. Inference is a conclusion about the whole class based upon an examination of less than the total number of known members of the class. The domain of argument is here. The business of the world is carried forward by inference, that is, by incomplete inductions. All the conclusions necessary for practical action rest upon incomplete inference. Even when perfect inference is possible, the delay necessary to attain it costs too much to warrant waiting. We are satisfied with "moral certitude" when we cannot wait for "absolute certitude."

Weakness and Strength of Inference. Common experience furnishes abundant proof of the weakness of inference. How many investments have been misplaced, how many battles have been lost, how many friends have been estranged, through incorrect inference! The practical ques-

tion always is, How many members must be tested before I am safe in drawing my inference about the whole class? The answer is: Every class must be judged separately. Look to your class, or to your supposed class, and consider that the less divergence there is among the members of your class, or your supposed class, the fewer will be the individual cases that you will have to test. Remember that the greater the variation among the individuals, the greater will be the number of members that you will have to inspect. If you want to generalize regarding the color of crows, and the color of violets, you will need to examine fewer crows than violets, because the color of crows, so far as the class has ever been inspected, is invariable, while the color of violets has been found to vary greatly. A class may be more, or it may be less, homogeneous. The strength of an inference depends upon two things: (1) a careful observation of a sufficient number of individuals; (2) the essential homogeneity of the class.

The practical value of inference is that it furnishes the reasoner with a "working hypothesis." The mind is forever thrusting forward "feelers" for a general law, just as some insects try the path in front of them before they find satisfactory footing. Are not men likewise daily qualifying anciently accepted generalizations? The scientist in his laboratory has a happy guess. He acts upon this guess as if it were true; tries it by various experiments until he knows whether it is true or not; drops it the moment he finds it untrue; verifies it in all possible ways if after several trials it seems to be true, and announces it only after the most rigid tests. Likewise the lawyer or

the general debater, in the presence of a definite proposition, conceives some theory of the case, which he hopes, or fears, will prove true. He tries this theory by the known evidence in the case. He abandons the theory and makes another more conformable to the evidence, as new facts inconsistent with the theory are disclosed.

The Refutation of Inferences. An induction may be incomplete, or the classification may be incorrect. If every member has been correctly observed, that is, if the class is really a class, the attention is then turned to the interpretation. Are the inferences from the facts correctly made? A novice might pass judgment on a number of crystals, saying they are all diamonds without a flaw. The expert, with the same data, might find several imitations, and numerous imperfections. Thus, an inference may be refuted by attacking either the facts on which it is based, or the interpretation of the facts which it assumes to be true. Unobserved cases or instances should be examined. If these do not support the generalization, marshal them in such numbers as to throw the conclusion into discredit. When a generalization is once suspected, its value as an argument is gone. To put the matter in another way: There are two methods of refuting inductive reasoning.

(1) Attack the facts. Try to show that the observation of the individuals is inaccurate, or that some do not have the alleged characteristic. The members of the class that have been left unobserved may give the evidence needed to throw the conclusion under suspicion, or at least to modify it.

(2) Attack the interpretation of the facts. Though the facts may be accurately observed, the interpretation aris-

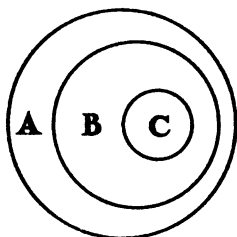
ing from the observation may be at fault. Thus, while it may be argued that there is an innate perversity in inanimate objects because a shoe string breaks when one is most in a hurry, or one's glasses break when he wants to read, or the car track is blockaded when one is latest, the interpretation can be shown to be in error, though the facts may be true.

Deductive Reasoning. In mature life one employs more and more a process of reasoning with a mass of facts already acquired which have been classified and have found expression in generalizations. This is not saying that in mature life we cease making inductions, for we are all frequently having new experiences and making inferences from them. Still, a mature person more and more easily forms a prompt and sure judgment upon the problems of daily life as they arise. This increased ease of judgment is due to growth in power of generalization that has been developed from past experiences. Thus, sometime in the past, by observation and induction, we have reached the generalization that the sun rises every morning. With this generalization in mind we confidently make the deduction that the sun will rise to-morrow morning.

Induction, postulating that what is true of several members of a class is true for the class as a whole, builds up a general statement regarding a class by observing all or several members of the class. Deduction, postulating that what is true of the whole class is true of each of its members, begins with the general statement that induction has built up and forms a judgment regarding an unobserved member of the class. We have bought a basket of peaches

after examining a few or many, but not every one, of the peaches in the basket. Our generalization, reached by induction, is that "all the peaches in this basket are ripe and unspcked." Later, some peaches are placed on the table before us. We learn that they have been taken from the basket which we bought. Unhesitatingly we take one and eat it, reasoning deductively: "This peach belongs to the class of ripe and unspcked ones, since it was taken from the basketful we have judged." Deduction is, then, purely a process of classification. As soon as we are assured that the bit of fruit we have taken belongs to the class upon which we have passed judgment, we say, without waiting to examine it, "This peach is ripe and unspcked."

The reasoning in full is this: — The peaches contained in the basket belong wholly within the class "ripe and unspcked." The one I have taken belongs wholly within the class contained in the basket. Hence, the one I have taken belongs to the class "ripe and unspcked." This is saying, substantially, that C is included in A, because C is included in B and B is included in A. The case may be represented graphically thus: —



A = "ripe and unspcked (fruit)."

B = "peaches contained in this basket."

C = "the one I have taken."

The Syllogism. The sole aim of this reasoning is to classify C wholly within A. Logic has reduced this method to its lowest terms in the syllogism.

- I. All the peaches in this basket are ripe and unspcked.
- II. This peach is from the peaches in this basket.
- III. This peach is ripe and unspcked.

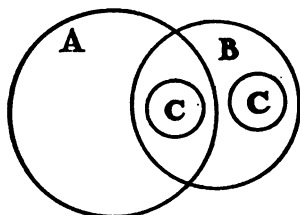
The first member (I) of a syllogism is called the major premise; the second (II) the minor premise; the third, (III) the conclusion. As already said, the major premise is a conclusion reached previously by an inductive course of reasoning and now accepted by us without question. The minor premise classifies the individual peach in question among those about which our judgment is already formed. Then comes the conclusion, declaring that this individual has the trait of the class.

The essential characteristics of the perfect syllogism should be carefully observed. In the first place, each member is a complete proposition. In the second place, there are three distinct terms, called, respectively, major, middle, and minor. In the syllogism given above, the major term is "ripe and unspcked," the middle term is "peaches in this basket," and the minor term is "this peach." In the third place, the terms occupy definite relative positions, invariably as follows:—

- I. Middle — Major.
- II. Minor — Middle.
- III. Minor — Major.

In the fourth place, all of the middle term is included wholly within the major term, and all of the minor term is included within the middle term. Here the chances for

error are most numerous. If we have decided only that *some* of the peaches in the basket are ripe and unspicked, or only that *nearly all* of them are ripe and unspicked, our deduction in regard to an individual peach from the basket is uncertain. Absolute conviction can come only when the middle term is *wholly* included within the major term. This can be made clear by a graphic illustration.



A = the major term.

B = middle term.

C = minor term.

Here C, the individual, may or may not lie within the bounds of A. This gives rise to suspicion, and the whole argument fails.

Transformation of the Major Premise. The remedy is to transform such a major premise as "Some of the peaches in the basket are ripe and unspicked" to the typical form beginning with the word "All," and to reduce the class to the desired limits by the use of modifying words, phrases, or clauses. Thus what we mean by "Some" in this case may be, "All in the upper half," for it may be that our examination when we bought the fruit was limited to the peaches in the first three or four layers, and we know that the first peaches taken from the basket come from the upper layers. If so, our major premise will now

read, "All the peaches taken from the upper half of this basket are ripe and unspcked." The minor premise then becomes, "This peach is of those taken from the upper half of this basket," and the conclusion, "This peach is ripe and unspcked." This transformation to the typical form of major premise, and the reduction of the class to the specific limits intended, bring the minor term wholly within the major term.

The chief reason for making such transformations is that they enable us to test with ease the soundness of reasoning, whatever may be the form of statement in which it first presents itself to us. All forms of major premise may be thus revised and put in the typical form without any sacrifice of their true meaning and intent, and, indeed, often with increase of accuracy and certainty of statement. The major premise, coming to us in any of the forms illustrated in the first column below, may easily be given the desired typical statement illustrated in the second column.

1. Some roses are red.	1. All American Beauty roses are red.
2. Many strikes are doomed to failure.	2. All strikes that are begun on a falling market, without large maintenance funds, without organization, and without the support of public opinion, are doomed to failure.
3. Most men (or nearly all men) will lie when in a tight place.	3. All men who have not formed the systematic habit of truth telling, and who are not willing to suffer a temporary disadvantage in favor of a remote advantage, will lie when in a tight place.

4. People generally are easily deceived.

5. None of B's make of shoes wear well.

6. Not all children of criminals turn out badly.

7. Either the bill must be paid or I will enter suit.

8. Wherever multitudes are suffering enforced idleness, bad legislation is at fault.

9. Whenever thieves fall out honest men get their dues.

10. If it rains we cannot come.

4. All people who do not reason carefully at all times are easily deceived.

5. All of B's make of shoes wear poorly.

6. All children of criminals who are early rescued from their evil surroundings and are put in a good environment turn out as well as other children.

7. All times when the bill is not paid are times when I will enter suit, or

7. All times when the bill is paid are times when I will not enter suit.

8. All places in which multitudes are suffering enforced idleness are places where bad legislation is at fault.

9. All times when thieves fall out are times when honest men get their dues.

10. All times when it rains are times when we cannot come.

It is evident, from some of the illustrations just given, that the restatement of a major premise in the typical form often reveals the weakness of the assumed fact. This is especially true in the case of those large, loose, and brilliant generalizations to which we are all prone. The restatement in typical form often compels us to find out what we really do mean, to qualify and requalify our statement until it expresses accurately a judgment that we can defend.

Identification of the Syllogism. Facility in identifying the syllogism as a whole is of the greatest practical value in examining the validity of another's reasoning. Very seldom does an argument come to us in the succinct form of statement enforced by the syllogism. It is usually concealed in a mass of phrases, each of which rests upon unspoken preconceptions and assumptions that may or may not be true. The task of examining thoroughly such an argument requires the ability to find the syllogism or syllogisms concealed in it, and this involves the necessity of detecting the major, middle, and minor terms. We perhaps meet the argument, "The air must have weight because it is a material substance." We see that the conclusion is, "The air has weight," and the minor premise, "The air is a material substance." What is missing is the major premise, and this we see must be, "All material substances have weight." The syllogism thus completed reads:

- I. All material substances have weight.
- II. The air is a material substance.
- III. The air has weight.

In like manner the following passages printed in the first column are represented by the syllogisms in the second column.

I. Blessed are the merciful, for they shall obtain mercy.

I. All who obtain mercy are blessed.

II. The merciful obtain mercy.

III. The merciful are blessed.

2. A. "You need not urge your friend's appointment any farther. It will do no good."

B. "Why? He is a man of great ability; he has had long years of experience; he is a steady man who must care for his family" — etc.

A. "Yes, all that you say may be true; but he is untrustworthy. I saw him cheat a newsboy yesterday morning in making change."

3. This is one of the most durable machines on the market. It won in the great transcontinental endurance test in 1908, and was easily first in every other endurance competition over rough and hilly roads.

I. All men who cheat turn unwary or defenseless are untrustworthy.

II. This man cheats the unwary or defenseless.

III. This man is untrustworthy.

I. All makes of machines that have won in endurance contests are the most durable.

II. This is a make of machine that has won in endurance contests.

III. This make of machine is the most durable.

Rules for the Syllogism. (1) Every syllogism must have three and only three terms, — major, middle, and minor.

(2) Every syllogism must have three and only three propositions, — the major premise, the minor premise, and the conclusion.

(3) The middle term must be wholly included within the major term, and must not be ambiguous.

(4) The minor term must be wholly included within the middle term, or the conclusion will not necessarily follow.

(5) From two negative premises no conclusion can be drawn. For example:

I. No Russians are negroes.

II. This man is not a Russian.

III. (Impossible to conclude whether this man is a negro or not.)

(6) If one premise is negative, the conclusion must be negative. For example:

I. No Russians are negroes (All Russians are not negroes).

II. This man is a Russian.

III. This man is not a negro.

Conversely, if the conclusion alone is given, and it contains a negative, then it follows that one of the premises is negative.

(7) From two particular premises no conclusion can be drawn. For example:

I. Some Germans sing well.

II. This man is a German.

III. (Impossible to conclude whether this man can sing well or not.)

(8) If one premise is particular, the conclusion must be particular.

Fallacies of the Syllogism. Errors or fallacies occurring in syllogistic reasoning are of two kinds: (1) errors of form, which are called logical or formal fallacies; and (2) errors of fact, which are called material fallacies. By the formal or logical fallacy is meant an error in the manner of stating the syllogism. By a material fallacy is meant an error in the subject matter of the premises. Any one who has acquainted himself thoroughly with the typical form of expressing the syllogism, who can identify the terms, and who knows their right places, can easily detect a formal fallacy. But the discovery of a material fallacy, when there is no fallacy of form involved with it, demands a knowledge

of the field of thought or fact from which the syllogism is drawn.

Material Fallacies. Nearly all material fallacies are due directly or indirectly to the use of four terms instead of three. They may be classified as of four varieties.

(1) *Arguing in a Circle, or Begging the Question.* In this fallacy the material of the conclusion is assumed to be true in the premises. In other words, a statement is made to prove itself. Let us assume that it is desired to prove that "Man is wise," and the proof takes the form, "because he has intelligence and prudence." In syllogistic form it would appear:

- I. All beings with intelligence and prudence are wise.
- II. Man is a being with intelligence and prudence.
- III. Man is wise.

There is no proof here, for intelligence and prudence make up wisdom; the syllogism assumes in its premises precisely what the conclusion is to prove. It is like the reasoning of the over-zealous partisan who declared, "The Republican party is the best party, because it is the Republican party." A syllogism must have three terms; this one has only two.

(2) *Evasion of the Issue* is a fallacy easily detected in the syllogism. For instance, the problem is to prove that A is the best man for city attorney. An ardent supporter of A argues that A is a popular and benevolent citizen. The real issue (whether A is a good lawyer, willing to prosecute criminals, able to detect flaws in proposed ordinances, free from evil influences) is evaded. The

evasion amounts to the introduction of a new, fourth term, "a popular and benevolent citizen."

(3) *False Consequent (Non Sequitur)* is a fallacy that occurs with surprising frequency. Who has not heard reasoning similar to this? "All railroad men who drink to excess are untrustworthy. Yes, Engineer John does sometimes take too much when he is off duty. But John is such a goodhearted fellow and has such a fine wife." The error here is apparent; a second major term has been introduced. Such a fallacy is often caused by the entrance of sentiment in such a way as to sway the mind from its logical course. The sequence of the syllogism has been disturbed by personal feeling for the individual.

(4) *Equivocation*. Fallacious reasoning frequently appears under the form of equivocation. Such, for instance, is a play upon the meaning of words. A fallacy of this kind is seen in the double meaning put upon the middle term "The end of life" in the following:

- I. *The end of life* is perfection.
- II. Death is *the end of life*.
- III. Death is perfection.

Another example of this kind of fallacy is as follows:

- I. All men who believe in majority rule are *democrats*.
- II. Senator X believes in majority rule.
- III. Senator X is a *Democrat*.

This is the so-called "illicit process." One of the terms has not the same meaning in the two sentences in which it occurs; hence, there are in reality four terms instead of three.

The Refutation of Deduction. The first step in refuting a deductive argument is to put it in the form of a syllogism, and to test it by the rules given above. If it does not show a formal fallacy, try it for a material fallacy. If the conclusion is inevitable from the premises, the only thing left is to overthrow one of these. If either one of the premises is discredited, the syllogism falls apart. Since the major premise is always the conclusion of previous induction, it may be refuted as induction is refuted. An excellent illustration of the way in which the minor premise may be attacked is given in Mr. Lincoln's speech at Galesburg. Here he has thrown Judge Douglas's argument into the typical form of a syllogism, and then has shown a defect in the minor premise.

I think it follows, and I submit to the consideration of men capable of arguing, whether as I state it, in syllogistic form, the argument has any fault in it?

Nothing in the Constitution or laws of any state can destroy a right distinctly and expressly affirmed in the Constitution of the United States.

The right of property in a slave is distinctly and expressly affirmed in the Constitution of the United States.

Therefore, nothing in the Constitution or laws of any state can destroy the right of property in a slave.

I believe that no fault can be pointed out in that argument; assuming the truth of the premises, the conclusion, so far as I have capacity at all to understand it, follows inevitably. There is a fault in it, as I think, but the fault is a fault of the premises. I believe the right of property in a slave is NOT distinctly and expressly affirmed in the Constitution, and Judge Douglas thinks it is. I believe that the Supreme Court and the advocates of that decision may search in vain for the place in the Constitution where the right of property in a slave is distinctly and expressly affirmed. I say, therefore, that I think one of the premises is not true in fact.

SUGGESTED EXERCISES

1. Bring to class a generalization which was once considered a perfect induction but has since been discredited.
2. Bring to class an example of imperfect induction and be prepared to state how many individuals should be examined to justify a universal inference.
3. Write one inductive argument on one of the following:
 - a. Self-made men are the strongest men.
 - b. The Indians have been treated unjustly by the United States.
 - c. Good manners are necessary to business success.
 - d. Inventors do not reap the rewards of their inventions.
4. Refute the argument you have written.
5. Bring from the laboratory or shop an instance of a "working hypothesis." What is its value?
6. Read the following from Huxley's discussion of induction and come to class prepared to discuss it:

THE METHOD OF SCIENTIFIC INVESTIGATION

The method of scientific investigation is nothing but the expression of the necessary mode of working of the human mind. It is simply the mode at which all phenomena are reasoned about, rendered precise and exact. There is no more difference, but there is just the same kind of difference, between the mental operations of a man of science and those of an ordinary person, as there is between the operations and methods of a baker or of a butcher weighing out his goods in common scales, and the operations of a chemist in performing a difficult and complex analysis by means of his balance and finely graduated weights. It is not that the action of the scales in the one case, and the balance in the other, differ in the principles of their construction or manner of working; but the beam of one is set on an infinitely finer axis than the other, and of course turns by the addition of a much smaller weight.

You will understand this better, perhaps, if I give you some familiar example. You have all heard it repeated, I dare say, that men of science work by means of induction and deduction, and that by the help of these operations, they, in a sort of sense, wring from Nature certain other things which are called natural laws and causes, and that out of these, by some cunning skill of their own, they build up hypotheses and theories. And it is imagined by many, that the operations of the common mind can be by no means compared with these processes, and that they have to be acquired by a sort of special apprenticeship to the craft. To hear all these large words, you would think that the mind of a man of science must be constituted differently from that of his fellow men; but if you will not be frightened by terms, you will discover that you are quite wrong, and that all these terrible apparatuses are being used by yourselves every day and every hour of your lives.

There is a well-known incident in one of Molière's plays, where the author makes the hero express unbounded delight on being told that he had been talking prose during the whole of his life. In the same way, I trust, that you will take comfort and be delighted with yourselves, on the discovery that you have been acting on the principles of inductive and deductive philosophy during the same period. Probably there is not one here who has not in the course of the day had occasion to set in motion a complex train of reasoning of the very same kind, though differing of course in degree, as that which a scientific man goes through in tracing the causes of natural phenomena.

A very trivial circumstance will serve to exemplify this. Suppose you go into a fruiterer's shop, wanting an apple, — you take up one, and, on biting it, you find it is sour; you look at it, and see that it is hard and green. You take up another one, and that too is hard, green, and sour. The shopman offers you a third; but, before biting it, you examine it, and find that it is hard and green, and you immediately say that you will not have it, as it must be sour, like those that you have already tried.

Nothing can be more simple than that, you think; but if you will take the trouble to analyze and trace out into its logical elements what has been done by the mind, you will be greatly surprised. In the first place, you have performed the operation of induction. You found that, in two experiences, hardness and greenness in apples went together with sourness. It was so in the first case, and it was confirmed by the

second. True, it is a very small basis, but still it is enough to **make an induction from**; you generalize the facts, and you expect to find sourness in apples where you get hardness and greenness. You found upon that a general law, that all hard and green apples are sour; and that, so far as it goes, is a perfect induction. Well, having got your natural law in this way, when you are offered another apple which you find is hard and green, you say, "All hard and green apples are sour; this apple is hard and green, therefore this apple is sour." That train of reasoning is what logicians call a syllogism, and has all its various parts and terms, — its major premise, its minor premise, and its conclusion. And, by the help of further reasoning, which, if drawn out, would have to be exhibited in two or three other syllogisms, you arrive at your final determination, "I will not have that apple." So that, you see, you have, in the first place, established a law by induction, and upon that you have founded a deduction, and reasoned out the special conclusion of the particular case. Well now, suppose, having got your law, that at some time afterwards, you are discussing the qualities of apples with a friend: you will say to him, "It is a very curious thing, — but I find that all hard and green apples are sour!" Your friend says to you, "But how do you know that?" You at once reply, "Oh, because I have tried them over and over again, and have always found them to be so." Well, if we were talking science instead of common sense, we should call that an experimental verification. And, if still opposed, you go further, and say, "I have heard from the people in Somersetshire and Devonshire, where a large number of apples are grown, that they have observed the same thing. It is also found to be the case in Normandy, and in North America. In short, I find it to be the universal experience of mankind wherever attention has been directed to the subject." Whereupon, your friend, unless he is a very unreasonable man, agrees with you, and is convinced that you are quite right in the conclusion you have drawn. He believes, although perhaps he does not know he believes it, that the more extensive verifications are, — that the more frequently experiments have been made, and results of the same kind arrived at, — that the more varied the conditions under which the same results are attained, the more certain is the ultimate conclusion, and he disputes the question no further. He sees that the experiment has been tried under all sorts of conditions, as to time, place, and people, with the same result; and he says with you,

therefore, that the law you have laid down must be a good one, and he must believe it.

In science we do the same thing; — the philosopher exercises precisely the same faculties, though in a much more delicate manner. In scientific inquiry it becomes a matter of duty to expose a supposed law to every possible kind of verification, and to take care, moreover, that this is done intentionally, and not left to a mere accident, as in the case of the apples. And in science, as in common life, our confidence in a law is in exact proportion to the absence of variation in the result of our experimental verifications. For instance, if you let go your grasp of an article you may have in your hand, it will immediately fall to the ground. That is a very common verification of one of the best established laws of nature — that of gravitation. The method by which men of science establish the existence of that law is exactly the same as that by which we have established the trivial proposition about the sourness of hard and green apples. But we believe it in such an extensive, thorough, and unhesitating manner because the universal experience of mankind verifies it, and we can verify it ourselves at any time; and that is the strongest possible foundation on which any natural law can rest.

So much, then, by way of proof that the method of establishing laws in science is exactly the same as that pursued in common life. Let us now turn to another matter (though really it is but another phase of the same question), and that is, the method by which, from the relations of certain phenomena, we prove that some stand in the position of causes towards the others.

I want to put the case clearly before you, and I will therefore show you what I mean by another familiar example. I will suppose that one of you, on coming down in the morning to the parlor of your house, finds that the teapot and some spoons which had been left in the room on the previous evening are gone, — the window is open, and you observe the mark of a dirty hand on the window frame, and perhaps, in addition to that, you notice the impress of a hobnailed shoe on the gravel outside. All these phenomena have struck your attention instantly, and before two seconds have passed you say, "Oh, somebody has broken open the window, entered the room, and run off with the spoons and the teapot!" That speech is out of your mouth in a moment. And you will probably add, "I know there has; I am quite sure of it!" You

mean to say exactly what you know; but in reality you are giving expression to what is, in all essential particulars, an hypothesis. You do not *know* it at all; it is nothing but an hypothesis rapidly framed in your own mind. And it is an hypothesis founded on a long train of inductions and deductions.

What are those inductions and deductions, and how have you got at this hypothesis? You have observed, in the first place, that the window is open; but by a train of reasoning involving many inductions and deductions, you have probably arrived long before at the general law — and a very good one it is — that windows do not open of themselves; and you therefore conclude that something has opened the window. A second general law that you have arrived at in the same way is, that teapots and spoons do not go out of a window spontaneously, and you are satisfied that, as they are not now where you left them, they have been removed. In the third place, you look at the marks on the window sill, and the shoe marks outside, and you say that in all previous experience the former kind of mark has never been produced by anything else but the hand of a human being; and the same experience shows that no other animal but man at present wears shoes with hobnails in them such as would produce the marks in the gravel. I do not know, even if we could discover any of those “missing links” that are talked about, that they would help us to any other conclusion! At any rate the law which states our present experience is strong enough for my present purpose. You next reach the conclusion that, as these kinds of marks have not been left by any other animal than man, or are liable to be formed in any other way than by a man’s hand and shoe, the marks in question have been formed by a man in that way. You have, further, a general law, founded on observation and experience, and that, too, is, I am sorry to say, a very universal and unimpeachable one, — that some men are thieves; and you assume at once from all these premises — and that is what constitutes your hypothesis — that the man who made the marks outside and on the window sill, opened the window, got into the room, and stole your teapot and spoons. You have now arrived at a *vera causa*; — you have assumed a cause which, it is plain, is competent to produce all the phenomena you have observed. You can explain all these phenomena only by the hypothesis of a thief. But that is a hypothetical conclusion, of the justice of which you have no absolute proof

at all; it is only rendered highly probable by a series of inductive and deductive reasonings.

I suppose your first action, assuming that you are a man of ordinary common sense, and that you have established this hypothesis to your own satisfaction, will very likely be to go off for the police, and set them on the track of the burglar, with the view to the recovery of your property. But just as you are starting with this object, some person comes in, and on learning what you are about, says, "My good friend, you are going on a great deal too fast. How do you know that the man who really made the marks took the spoons? It might have been a monkey that took them, and the man may have merely looked in afterwards." You would probably reply, "Well, that is all very well, but you see it is contrary to all experience of the way teapots and spoons are abstracted; so that, at any rate, your hypothesis is less probable than mine." While you are talking the thing over in this way, another friend arrives, one of the good kind of people that I was talking of a little while ago. And he might say, "Oh, my dear sir, you are certainly going on a great deal too fast. You are most presumptuous. You admit that all these occurrences took place when you were fast asleep, at a time when you could not possibly have known anything about what was taking place. How do you know that the laws of Nature are not suspended during the night? It may be that there has been some kind of supernatural interference in this case." In point of fact, he declares that your hypothesis is one of which you cannot at all demonstrate the truth, and that you are by no means sure that the laws of Nature are the same when you are asleep as when you are awake.

Well, now, you cannot at the moment answer that kind of reasoning. You feel that your worthy friend has you somewhat at a disadvantage. You will feel perfectly convinced in your own mind, however, that you are quite right, and you say to him, "My good friend, I can be guided only by the natural probabilities of the case, and if you will be kind enough to stand aside and permit me to pass, I will go and fetch the police." Well, we will suppose that your journey is successful, and that by good luck you meet with a policeman; that eventually the burglar is found with your property on his person, and the marks correspond to his hand and to his boots. Probably any jury would consider those facts a very good experimental verification of your hypothesis, touch-

ing the cause of the abnormal phenomena observed in your parlor, and would act accordingly.

Now, in this supposititious case, I have taken phenomena of a very common kind, in order that you might see what are the different steps in an ordinary process of reasoning, if you will only take the trouble to analyze it carefully. All the operations I have described, you will see, are involved in the mind of any man of sense in leading him to a conclusion as to the course he should take in order to make good a robbery and punish the offender. I say that you are led, in that case, to your conclusion by exactly the same train of reasoning as that which a man of science pursues when he is endeavoring to discover the origin and laws of the most occult phenomena. The process is, and always must be, the same; and precisely the same mode of reasoning was employed by Newton and Laplace in their endeavors to discover and define the causes of the movements of the heavenly bodies, as you, with your own common sense, would employ to detect a burglar. The only difference is, that the nature of the inquiry being more abstruse, every step has to be most carefully watched, so that there may not be a single crack or flaw in your hypothesis. A flaw or crack in many of the hypotheses of daily life may be of little or no moment as affecting the general correctness of the conclusions at which we may arrive; but, in a scientific inquiry, a fallacy, great or small, is always of importance, and is sure to be in the long run constantly productive of mischievous, if not fatal results.

Do not allow yourselves to be misled by the common notion that an hypothesis is untrustworthy simply because it is an hypothesis. It is often urged, in respect to some scientific conclusion, that, after all, it is only an hypothesis. But what more have we to guide us in nine tenths of the most important affairs of daily life than hypotheses, and often very ill-based ones? So that in science, where the evidence of an hypothesis is subjected to the most rigid examination, we may rightly pursue the same course. You may have hypotheses and hypotheses. A man may say, if he likes, that the moon is made of green cheese: that is an hypothesis. But another man, who has devoted a great deal of time and attention to the subject, and availed himself of the most powerful telescopes and the results of the observations of others, declares that in his opinion it is probably composed of materials very similar to those of which our own earth is made up: and that is also only an hypothesis. But I need not tell you that there is an enormous difference

in the value of the two hypotheses. That one which is based on sound scientific knowledge is sure to have a corresponding value; and that which is a mere hasty random guess is likely to have but little value. Every great step in our progress in discovering causes has been made in exactly the same way as that which I have detailed to you. A person observing the occurrence of certain facts and phenomena asks, naturally enough, what process, what kind of operation known to occur in Nature applied to the particular case, will unravel and explain the mystery? Hence you have the scientific hypothesis; and its value will be proportionate to the care and completeness with which its basis had been tested and verified. It is in these matters as in the commonest affairs of practical life: the guess of the fool will be folly, while the guess of the wise man will contain wisdom. In all cases, you see that the value of the result depends on the patience and faithfulness with which the investigator applies to his hypothesis every possible kind of verification.

7. Write out the complete syllogism for which each of the following is the conclusion:

- a. The world will hear from that boy.
- b. This man is innocent.
- c. That picture is by Turner.
- d. The barometer indicates stormy weather.
- e. That person is proud.

8. Write a deductive argument on one of the following:

- a. The office of tax inquisitor should be abolished.
- b. The honor system should be established in every college.
- c. The bankruptcy law is unjust.
- d. Electricity will come into general use as a motive power.
- e. Coeducation is a failure.

9. How could the above arguments be refuted?

10. Analyze for the inductive and deductive elements the arguments to support the following:

- a. "A little learning is a dangerous thing."
- b. Panama should be a sea-level canal.
- c. Freedom of the press should be restricted in the United States.

11. Reduce each of the above arguments to syllogistic form.

12. What would be the relation of the inductive and deductive elements in arguments used for the following purposes?

- a. Presenting life insurance to a poor man with a large family.
- b. Selling to a farmer, who had never seen one before, a corn harvester, a telephone, a gasoline engine.
- c. Selling an American locomotive to an Englishman.
- d. Applying for a patent.
- e. Selling to a housewife a new washing machine, churn, aluminum cooking utensils.

CHAPTER V

MODES OF REASONING (Continued)

A Priori. The common saying, "Nothing merely happens," is a recognition of the fact that all events, from the most commonplace to the most marvelous, have back of them an impelling force, and that they, in turn, are the cause of some result which is bound to follow in accordance with natural law. Given a series of conditions or events which have always been followed by a particular result, the natural conclusion is that when these conditions exist the expected result will follow.

It is springtime; fruit trees are in full bloom. The fruit grower awakens in the morning and discovers that a heavy frost has appeared. Without looking at the trees he says, "The fruit is killed; apples and peaches will be scarce; prices will be high." Or, the neighborhood weather prophet predicts a long cold winter because the corn husks are thick, the fur on the fox is long, and the rabbit's nest is heavily lined.

Such an inference as to what will follow from certain observed facts is called *a priori* reasoning. It is reasoning from cause to effect, and its accuracy depends upon the closeness of relation between the producing cause and the resulting effect. Illustrations from daily life are numerous. It may not be raining, but we take an umbrella. The evening may be bright and clear, but the weather report

announces that there will be showers the next day. The farmer predicts a good corn crop or a poor wheat crop, though the grain is yet green. The business man buys heavily at one time, but refrains from buying at another. The politician predicts prosperity; and the scientist announces what will take place a million years hence. In each case certain existing causes are noted, and from experience and familiarity with natural laws the effect is stated.

In this form of reasoning it often happens that intermediate causes and effects are left unmentioned and the remote effect given. When the fruit grower saw the heavy frost he might have said, "Well, fruit will be high next winter." He has not stated the intervening steps, namely, a frost — fruit killed — fruit will be scarce — demand will exceed supply — when demand exceeds supply prices rise.

An amusing illustration of the omission of the intermediate causes and effects is seen in an adaptation from Darwin. "The dog tax is high; therefore, the crop of clover seed will be heavy." What are the intermediate steps? The dog tax is high. There will be fewer dogs. Fewer dogs, there will be more cats. More cats, there will be fewer mice in the clover patch. Fewer mice in the clover patch, there will be more bumblebees, for mice kill the bees. More bees, a greater amount of pollen will be carried. The greater the amount of pollen carried, the better the cross-fertilization, and the heavier the crop of seed.

A Priori Reasoning a Form of Deduction. *A priori* reasoning, or reasoning from cause to effect, is purely deductive. The long experience of the fruit grower has

given him an inductive conclusion from all the instances that he has observed. Although he may not — probably does not — state it in words, he starts with this inductive conclusion as a major premise: At all times when fruit trees are in bloom and there is a heavy frost, fruit is killed.

Refutation of *a Priori* Reasoning. If the truth of an *a priori* conclusion is suspected one should first examine into the truth of the major premise in order to show that the effect does not necessarily follow the cause. The closer the cause and the effect are connected by an established law, the more difficult is the refutation. Doubtless it would be more difficult to refute the argument of the fruit grower than the argument of the weather prophet. The statement that a stone thrown into the water will sink, cannot be refuted, for the effect follows because of an absolute law. But the superstitions about spilled salt, thirteen at a table, a black cat, moving on Friday, and the like, are easily refuted. There is absolutely no logical reason or natural law existing here between the alleged cause and the effect.

In the second place, to refute an *a priori* conclusion, other conditions which the reasoner has failed to take into account may be shown. His conclusion may be correct so far as the conditions observed are concerned, but he may have been too limited in his observation. The fruit grower's conclusion may have been false because the frost was not general or the conditions were not such as to destroy even his own fruit. To show that other forces are at work that will modify or nullify the natural effect is to weaken the *a priori* argument.

But the detection of the fallacy is not always easy, for it frequently happens that there is an ignorance of the law at work. In such cases, close inspection and care are necessary, and the particular question must be considered, together with its own conditions and its own peculiar laws. A man is seen operating an old-fashioned grindstone. He stands on one foot, while he uses the other on a treadle for motive power. One, looking at him, would say, *a priori*, "The leg which operates the treadle will tire first." Apparently a natural law is at work, and the conclusion seems sound. But, as a matter of fact, the inference is not true, for the leg upon which the man stands tires sooner than the one which is working.

A *Posteriori* Reasoning. A *posteriori* reasoning, also a form of deduction, is reasoning from effect to cause. It simply reverses the *a priori* process.

Suppose the fruit grower had been south for two weeks. When he left, the trees were in full bloom and the fruit cells were green and healthy. He had heard nothing of a frost, but on his return he found the new green leaves shriveled, the fruit cells black and the buds falling. He observed effects only, but from these he at once made the inference, "There has been a heavy frost; the fruit is killed." This form of reasoning is used as frequently in daily life as *a priori* reasoning. By it the farmer determines what has happened to certain crops or fields; the geologist builds up a whole system of earth structure; the historian interprets the life and character of peoples long gone; and the physician diagnoses a case.

A priori and *a posteriori* reasoning are often closely

associated. In its attempt to reach a satisfactory conclusion the mind passes rapidly from one form to the other. A detective is set to work on a case. He finds certain marks, certain conditions, certain effects. From these effects he reasons that the crime was committed by a man of large build, that he was of a certain type, and that he had certain peculiar characteristics. While he reasons thus he is working from effect to cause, — *a posteriori*. But suppose that from the facts he has found he asserts that the man will follow a certain road, or will hide at a particular place, or will appear in disguise at a distant point. The reasoning of the detective then becomes *a priori*, for he is determining what effects will follow from the facts observed. When the physician diagnoses a case he uses both forms of reasoning. He first reasons from observed effects to causes; then that certain results will follow from the observed effects, and intervenes with his medicine to prevent these results, or introduces new and counteracting causes.

Likewise, reasoning from circumstantial evidence may be at one time *a priori* and at another time *a posteriori*. When part of a broken skeleton key is found in the door of a house that has been robbed, we immediately reason from effect to cause, and conclude that a man tried to enter the house by means of a skeleton key and that the part broken off exists and may probably be found. The evidence might show that the accused had been imprisoned many times before for similar offenses, that he was in the city at the time of the robbery, and that he was seen in the vicinity a short time before it occurred. A verdict of guilty in such a case would be based on *a priori* reasoning.

Refutation of a *Posteriori* Reasoning. The principles already laid down for the refutation of an *a priori* conclusion apply likewise to the refutation of an *a posteriori* conclusion. One may show either that there is no logical connection between the facts and the alleged cause or that the observer has failed to consider all the facts and especially intervening causes or that his observation has been inaccurate. The more limited the observation and the more hasty the conclusion, the greater is the possibility of error. Not only must all the facts be carefully considered, but the relation of the facts to the conclusion must be accurately noted.

Typical Form of a *Posteriori* Reasoning. Reasoning from effect to cause takes the following general syllogistic form:

- I. At all times when these results have been observed,
they have been preceded by causes (a),(b),(c), etc.
- II. This is a time when these results have been observed.
- III. This is a time when these results have been preceded by causes (a), (b), (c), etc.

Analogy is arguing that, since a certain assertion is true in one case, a similar assertion is true in another case, because similar laws govern both in their points of resemblance. The parables of the Bible are excellent illustrations of this form of reasoning.

A sower went forth to sow. And when he sowed, some seed fell by the wayside, and the fowls came and devoured them. Some fell upon stony places, where they had not much earth; and forthwith they sprung up because they had no deepness of earth; and when the sun

was up they were scorched; and because they had no root they withered away. And some fell among thorns; and the thorns sprung up and choked them. But others fell into good ground and brought forth fruit, some an hundredfold, some sixtyfold, and some thirtyfold.

Hear ye, therefore, the parable of the sower. When any one heareth the word of the Kingdom and understandeth it not, there cometh the wicked one, and catcheth away that which was sown in his heart. This is he which receiveth seed by the wayside. But he that receiveth the word into stony places, the same is he that heareth the word and anon with joy receiveth it; yet hath he not root in himself, but dureth for a while. He also that receiveth seed among the thorns is he that heareth the word, and the care of this world and the deceitfulness of riches choke the word, and he becometh unfruitful. But he that receiveth seed into the good ground is he that heareth the word and understandeth it, which also beareth fruit and bringeth forth some an hundredfold, some sixty, and some thirty.

In this parable the various ways in which men receive truth are compared to the ways in which soils receive seed. The only point of resemblance is the degree of receptivity in soils and in minds. The comparison is between two entirely different classes of objects; yet the argument is forcible because there is only one point of resemblance. The dissimilarity in all other respects calls attention at once to the single point of comparison and thereby drives home the one truth more effectively. It matters not how much the objects may differ in other respects, provided they resemble each other closely in the one point at which the comparison is made.

Refutation of Analogy. In refuting conclusion from analogy, the only thing demanding attention is the point of resemblance, — the point upon which the analogy is based. Unless there is a law or principle that holds for both classes at this one point, the analogy is defective.

In 1816 Mr. Clay voted for a new Compensation Act of Congress. It aroused a tornado of popular wrath. Not even the great Commoner could stand against this, and sagaciously resolved to try to weather it. Meeting a staunch supporter who had turned against him, he said:

"Jack, you have a good flintlock, haven't you?"

"Yes."

"Did it ever flash in the pan?"

"Once it did, but only once."

"What did you do with it? Did you throw it away?"

"No, I picked the flint and tried it again."

"Well," said Mr. Clay, "I have flashed only once, — on this compensation bill, — and are you going to throw me away?"

"No," cried the hunter, touched in his tenderest part; "no, Mr. Clay, I will pick the flint and try you again." — HENRY WATTERSON: Oratory of the Stump.

That old hunter was convinced, but had he taken the trouble to think, he would have seen the weakness of the argument. The common point of resemblance is the likelihood of each to fail to act when duty demands action. But in this regard the same law or principle does not apply to both, for man is a free-will being acting on his own initiative and responsible for his own error, while the gun is an inanimate object which fails to work only because the hunter himself has been negligent in caring for it. The hunter had made some error, or his flint would have sparked. Mr. Clay was himself responsible for his mistake in voting. The analogy is unusually clever, for it shifts attention from the fallacy involved in disregarding the principle that a free moral agent is responsible for his acts while a gun is not responsible for its acts, to the flattering opportunity for consistency in giving Clay and the gun alike another trial.

A Fortiori Reasoning. *A fortiori* reasoning is a form of analogy. It deals with two members of the same class, and

is based upon an essential resemblance — the very resemblance, in fact, upon which the classification is made. The principle underlying the argument is that what is true for a low type of the class is true, in a much stronger sense, for a high type of the class. The statement, "It is wrong to mistreat a dog, but it is a much greater wrong to mistreat a child," illustrates this kind of argument. Here the general class is "treatment of living things dependent upon man." When it is argued that a physician should heal himself; that ministers and professors should be held to stricter moral account than parishioners and students; that the cultured and educated should be held to a much higher moral standard than the ignorant, the reasoning is *a fortiori*. Like the argument from analogy, it may be refuted by showing that an improper classification has been made and that the two members cannot be compared or contrasted on the principle implied.

The Dilemma is a process of showing that either one of two alternatives will bring disaster. The common phrase, "between the devil and the deep sea," has grown out of this form of reasoning. When well handled it is very effective. The attorney for the state at a recent trial of a man accused of murder in the first degree made excellent use of it. The defense admitted the killing because it was, in fact, useless for the accused to deny that he had committed the deed. The case was defended on the plea of insanity. The prosecuting attorney then made the point, that if the accused was insane he should be sent to the asylum, but if he was not insane he should be convicted and condemned like any other criminal. These

were the two alternatives, either of which would bring disaster.

Another example is found in the plot of Sophocles's "Antigone." The Greeks believed that the souls of the unburied wandered lonely and forlorn on the banks of the Styx. It was a law among them, also, that the one who disobeyed the command of the king should be put to death. Now, Antigone's brother, Polynices, whom she loved dearly, had been killed in a combat with his brother. His body had been thrown outside the city gates and left unburied by the command of King Creon. Antigone's position offered these alternatives: — either to disobey the spiritual and moral law which required the next of kin to cast a few handfuls of dust on the body of the dead, or to disobey the law of the land and suffer its penalty. One choice meant suffering from remorse of conscience; the other meant physical suffering. She chose to obey the spiritual law, and, as a result, became a martyr.

The dilemma offers disastrous result no matter which alternative is taken. Caliph Omar burned the great library at Alexandria, justifying his action by saying, "If these books do not contain anything not in the Koran, they are useless and should be burned; if they do contain something not in the Koran, they are pernicious and should be burned."

This reasoning takes the form: —

- I. If A is B, C is D.
If E is F, C is D.
- II. Either A is B, or E is F.
- III. Therefore, C is D.

In many forms of the dilemma, the expression, "C is D" is a variable quantity, but the undesirable conclusion persists through all variations.

If either premise is untrue, the dilemma fails. In the Lincoln-Douglas debate at Freeport, Judge Douglas tried to drive Mr. Lincoln into a dilemma. The latter had been recently nominated by the Republican party as its candidate for the United States Senatorship against Douglas. At a previous election, Lincoln had been a prominent candidate, and had received the votes of the Representatives from the Freeport district. Before that election, said Judge Douglas, various local Republican conventions, and also the Republican Representatives in the legislature, adopted certain resolutions pledging every member not to vote for any man for Senator "unless he was committed to the doctrine of no more slave states, the prohibition of slavery in the territories, and the repeal of the Fugitive Slave Law. Mr. Lincoln tells you to-day he is not pledged to any such doctrine. . . . Either Mr. Lincoln was pledged to each one of those propositions, or else every Black Republican Representative from this district violated his pledge of honor to his constituents by voting for him. I ask you, which horn of the dilemma will you take? Will you hold Lincoln up to the platform of his party, or will you accuse every Representative you had in the legislature of violating his pledge of honor to his constituents? There is no escape for you. Either Mr. Lincoln was committed to those propositions, or your members violated their faith. Take either horn of the dilemma you choose."

Mr. Lincoln destroyed the dilemma by refuting an error

in the material of the premises. He proved that the resolutions quoted by Judge Douglas were not included in the platform officially adopted by the Republican state convention.

The Argument from Authority is a case of deduction usually reducible to the following syllogistic form:

- I. All that A says on subject X is true.
- II. This statement on subject X is made by A.
- III. This statement is true.

but sometimes involving the rash reasoning:

- I. All that A says is true.
- II. This statement is made by A.
- III. This statement is true.

The first form asserts a major premise that is conceivably true. It is possible, for instance, that a scientist working for many years in a limited field should acquire so complete a knowledge of that field as to warrant implicit belief in all that he says on matters within his special domain. The second form asserts a major premise that is incredible. Yet the attempt is frequently made to use it, always, however, more or less covertly. When the prestige of high public office is employed either to aid or to discredit theories or enterprises having no relevance to the duties of the office or the special fitness of the official in the matter, we have a case in point. An eminent authority in one field of human endeavor is not therefore entitled to special credence in another field.

Within the same field, the influence of authority varies in convincing power directly with reputation. An obscure hermit developed a theory respecting the permanence of

certain traits in crossbreeding. He had not sufficient reputation to command even a careful examination of his theory by scientific men, and it was discredited and forgotten. Years later an authority in science happened upon the theory, gave it his sanction, and to-day the Mendelian theory is accepted.

In a debate good authorities are quoted on both sides, and the advantage, so far as this argument is concerned, rests with the side that produces the greatest number of strong authorities. The debater who does not name his authorities and establish their right to be believed on the specific point in dispute, misses the sole advantage of the argument from authority — the influence of great names.

Equally eminent authorities are so often in conflict that respect for the argument from authority has greatly diminished. In these latter days intelligent people are not overawed by names. They go back of the names to consider the reasonableness of what the authorities have to say. Expert testimony, too, no longer enjoys its former importance and its power to convince, largely because of lack of unanimity among equally eminent experts testifying to the meaning of the same set of facts.

The Appeal to Universal Experience. The appeal to universal or common experience, to "the common judgment of mankind," to what "everybody believes," to what "all know," to "well-known facts of human nature," and the like, may be reduced to the following form: —

- I. All that is attested by universal consent is true.
- II. This assertion is attested by universal consent.
- III. This assertion is true.

A proverb, a maxim, many a current platitude in educational, political, and religious discussion that is made to do duty as argument, is to be classified here. There is a legitimate and there is a fallacious use of such an appeal. The use is legitimate when common experience accords with all the facts ascertained in other ways and established by other kinds of argument. Thus Burke, in his speech on Conciliation with the Colonies, affirming that the proposal of conciliatory measures should originate with Parliament, gives as a reason the aphorism that the superior power may offer peace with honor and with safety, whereas the concessions of the weak are the concessions of fear. This appeal to what we know of human nature would probably have passed unchallenged even though not further supported; but Burke took occasion also to cite four conspicuous historical examples of the successful exercise of magnanimity by the superior power. The appeal to common experience was not left to bear the whole burden of the argument. The fallacious use of the appeal is seen when it stands alone, when it is made to conceal mere unsupported assertion. The major premise may be true, but there is no way of demonstrating the truth of it.

Essentially the argument is in most cases an evasion of the duty to produce genuine evidence. The real question is not "What do all men believe in the premises?" but "What are the facts?" The disingenuous will use as argument a universal prejudice, known to the user to be false. Any desperate political campaign of national proportions will furnish an example. Says Schopenhauer with bitter hu-

mor: "Most people think with Aristotle that that may be said to exist which many believe. There is no opinion, however absurd, which men will not readily embrace as soon as they can be brought to the conviction that it is generally adopted. . . . It is very curious that the universality of an opinion should have so much weight with people, as their own experience might tell them that its acceptance is an entirely thoughtless and merely imitative process."

The Personal Argument. A spurious advantage is sometimes gained by applying an opponent's contention to himself; by testing his present or former actions or his other known professions by the doctrines which he is upholding at the moment. His own actions and his other known professions are logically irrelevant; they make no difference whatever in determining the objective truth of the doctrine he is advocating; yet the fear of inconsistency, especially between "preaching and practice," is so great in every one as often to cause discomfiture when pointed out. The free trader who happens to be a manufacturer of steel rails is not logically debarred from denouncing the whole protective tariff system as iniquitous. In a campaign, however, he would be sure to be asked why he remained in an iniquitous business, and his arguments would doubtless suffer loss of effectiveness in consequence. An argument in favor of municipal ownership of street railways should not be discredited in any respect, if the only answer to it is that the man who makes it once accumulated a great fortune in the street-railway business under private ownership. Logically, the victim of alcohol is the very one

who should be advocating the most stringent liquor laws.

Yet we all know that in the common mind the very opposite of all this is assumed to be true. With what amusing suddenness will a hidebound partisan who is advocating some needed measure abandon the whole subject when he is informed that the principle underlying the measure is a cardinal principle of the opposite party, or that the measure is inconsistent in principle with some practice that his own party has defended in the recent past! A clergyman urging some practical measure is supposed to be reduced to silence if it is pointed out that the measure rests upon an idea that is antagonistic to some forgotten dogma of his sect.

In all of these instances the search for truth is supposed to yield to the popular idol "consistency" without a struggle. However, fallacious though the personal argument may be, it may be excusable when used in reply to a personal argument, on the ground of economy. No one is deceived by the retort personal to the personal attack. The accusation of inconsistency is answered sufficiently, in the popular view, by proving inconsistency in the accuser, and while both accusation and retort are logically irrelevant, every one is satisfied, and the battle on the real issues may proceed. The following extract from Lincoln's speech in the Freeport debate with Douglas illustrates this form of argument at its best:

Judge Douglas recurs again, as he did upon one or two other occasions, to the enormity of Lincoln — an insignificant individual like Lincoln — upon his *ipse dixit* charging a conspiracy upon a large number

of members of Congress, the Supreme Court, and two Presidents, to nationalize slavery. On this occasion, I wish to recall his attention to a piece of evidence which I brought forward at Ottawa on Saturday, showing that he had made substantially the same charge against substantially the same persons, excluding his dear self from the category. I ask him to give some attention to the evidence which I brought forward that he himself had discovered a "fatal blow being struck" against the right of the people to exclude slavery from their limits, which fatal blow he assumed as in evidence in an article in the *Washington Union*, published "by authority."

I have asked his attention to the evidence that he arrayed to prove that such a fatal blow was being struck, and to the facts which he brought forward in support of that charge, — being identical with the one which he thinks so villainous in me. I must again be permitted to remind him that although my *ipse dixit* may not be as great as his, yet it somewhat reduces the force of his calling my attention to the enormity of my making a like charge against him.

Reduction to the Absurd. A method found useful on certain occasions is the reduction of an opponent's argument to an absurdity by applying it to an extreme case. This is something more than mere refutation; it strengthens one's own side at the same time that it weakens the opposition. At a recent session of a state legislature, the question of county local option was debated. Those opposed to the bill argued that it should not be passed, because it would deprive men of their constitutional rights of liberty and property. Those who favored the passage of the law assumed the soundness of this position for the sake of argument and asserted that the same argument should apply to the milk dealer whose impure milk is confiscated, for he is deprived of his property; that the argument should apply to the "grafter" who defrauds the state and deceives his fellow men, for when he is punished he is

deprived of his property and his liberty; that it should likewise apply in the case of the robber or murderer when he is confined behind prison walls.

Henry Ward Beecher used the argument effectively in his Liverpool speech. His audience favored the seceding states, for one reason at least, because they were the struggling weaker party. To show how such a worthy principle might have pernicious results if blindly followed, he made use of an extreme case; he declared that it might equally well induce citizens to take the part of a criminal in the hands of two policemen.

The Method of Elimination. It frequently happens that a proposition can be established most successfully by the method of elimination. Instead of proving the proposition directly, or before using direct proof, the debater disposes of all possible objections to his positions. If one were arguing for municipal ownership one might show that all other possible solutions of municipal problems had either proved a failure or were obviously impracticable. He would then have an open field for the arguments supporting his case. It is clear that this method is strong only when all possible solutions, save the one advanced, are shown to be out of the question.

Such an argument was skillfully used by an attorney in a recent case before the railroad commission of Ohio. He asserted that in the particular case the commission was exercising a judicial function, and was therefore bound by the rules of the courts in the admission of evidence and the right of appeal. To prove that the commission was acting in this case in a judicial capacity, he first showed

that it could not be exercising legislative power, for, if the act which created the commission gave it legislative power, the act was itself unconstitutional and the whole commission would therefore have absolutely no power. He then argued that the particular case before the commission could not be considered under its executive power. Since the commission must necessarily act under one of these three functions, namely, legislative, executive, or judicial, one conclusion and one only was left:—the commission was acting as a judicial body and, as such, must be bound by judicial rules. The greater the number of possible solutions of a problem, the more difficult is the successful use of the method of elimination.

SUGGESTED EXERCISES

1. Discuss any superstition which has come to your notice. If possible, find its origin. Test it.

2. From your own experience write out an illustration of *a priori* reasoning. Of *a posteriori* reasoning.

How could your conclusions be refuted?

3. Write a paragraph of *a priori* reasoning on one of the following subjects:

- a. A storm is brewing.
- b. That boy will make his mark in the world.
- c. The price of turkeys will fall the day before Thanksgiving.
- d. Now is the time to buy cattle.
- e. That lake will eventually dry up.
- f. The Republicans will win in this election.
- g. People will soon be moving back to the country.
- h. That person has come of good family.

4. Write an *a posteriori* argument on one of the following:
 - a. There has been a hard struggle here.
 - b. I know that student is careless.
 - c. That couple has been recently married.
 - d. In the early days this must have been the scene of an Indian camp.
 - e. Burglars have recently occupied this cave.
 - f. A battle of the Revolutionary War must have been fought here.
5. Read Frank Stockton's story, "The Lady or the Tiger?" Write a sequel, using *a priori* reasoning. Read "The Discourager of Hesitancy," in *Harper's Magazine*, XXX, p. 482.
6. Find illustrations of *a posteriori* reasoning in:
 - a. Kipling's "Jungle Books."
 - b. Poe's Stories.
 - c. Conan Doyle's Sherlock Holmes Stories.
7. Note down from general reading an illustration of reasoning by analogy and of *a fortiori* reasoning. Bring these to class and analyze for soundness of reasoning.
8. Write an analogy to prove the following:
 - a. Military drill should be compulsory in all state universities.
 - b. Virtue is its own reward.
 - c. Cities should own and control their water and lighting plants.
 - d. Criticism should stimulate rather than discourage.
 - e. Selfishness mars one's character.
9. Reduce to an absurdity:
 - a. The United States needs a class of unskilled workmen.
 - b. A city has a right to all the water of a stream flowing through its limits.
 - c. Every man has a right to all he can acquire.
 - d. Every man has a right to will his property as he pleases.
 - e. "Only toys should be made of gold." — More's "Utopia."
 - f. "Styles should never change." — More's "Utopia."
10. Write and bring to class an example of imperfect dilemma.

CHAPTER VI

MATERIAL FOR AN ARGUMENT

THIS chapter offers some practical suggestions on the collection, sifting, and arrangement of the material for argument.

Collecting Material. Each question as it arises determines in some measure the special method of collecting material that may best be employed in the particular case, but a general method which can be modified as occasion requires is always advantageous. An economical method is the card system. The points as collected, together with the authorities and evidence, should be written on cards or separate pieces of paper of uniform size. The source of the note or quotation on each card should be set down. Failure to do this causes a great waste of time. Each card should be properly labeled, so that any argument or set of arguments may easily be shifted from place to place as the most effective position for it is found. In this manner arrangement according to a definite plan is simplified. At the outset a helpful source of information is Poole's "Index to Periodical Literature." From this all important magazine articles on the subject may be found. The student should also know how to use such aids to finding material as the following:

- a. A. L. A. Index to General Literature.
- b. The Reader's Guide to Periodical Literature.

- c. Lalor's Cyclopedia of Political Science, Political Economy, and of the Political History of the United States.
- d. Bowker and Iles's Readers' Guide in Economic, Social, and Political Science.
- e. Bliss and Blinder's New Encyclopedia of Social Reform.
- f. The Tribune Almanac.
- g. Whitaker's Almanack.
- h. The Annual Register.
- i. Statesman's Year Book.
- j. Brookings and Ringwalt's Briefs for Debate.
- k. Ringwalt's Briefs on Public Questions.
- l. Matson's References for Literary Workers.

If the subject is historical, political, economic, or technical, the special magazines and special libraries in these departments must be consulted. At the same time the card system or subject index, to be found in every well-organized library, should be used. Nearly all important questions have been publicly discussed before various assemblies or in Congress or in books and magazines. When the material comes as a result of individual thought or research, the "card system" of noting points is equally convenient.

Reading on Both Sides of a Question. If the argument is to be satisfactory, it is essential that both sides of the question be understood. One must read and prepare on both the affirmative and the negative of the proposition. A strong football team trains not only to break through the line of an opponent, but also to withstand the attacks upon its own line. Both are essential to a winning team. Many a game has been lost simply because a certain trick or play was not anticipated and successfully blocked. A debater, like a victorious general, must foresee the strata-

gem which his adversary is likely to employ, and must prepare to meet it. It would be a poor lawyer, indeed, who never considered the testimony and argument that might be used against him.

Sifting the Material. When the question has been worked over, the material mastered, and numerous points written down, there still remains the problem of relative values. Doubtless much material on every phase of the subject has been collected; the work has not been thoroughly done if the writer does not have a full supply of notes. But the notes are not equally important. Though all may be more or less relevant, some may have little value as proof; some may need to be united; some may need further support. Some may be mere declaration or assertion without a particle of evidence to support them. We need continually to remind ourselves, as we are looking over our notes, that mere assertion is not argument, unless the assertion is generally accepted as true; and that one unproved declaration does not help another. In short, the material collected needs to be sifted: the value of each note needs to be carefully estimated, and every piece of evidence needs to be weighed and given its proper rating.

Arrangement of the Material. By the time a considerable body of notes has been accumulated and sifted, the two or three main issues (see p. 26) have been discovered. The first work of arrangement consists in putting each of the notes into logical relation with some one of these main issues. Each of the main issues thus becomes the center of a group of related notes. The second task of arrange-

ment is to determine the best order of the items in each group considered by itself. This may involve, and usually does involve, the uniting of some notes that repeat one another in part or in whole, and in some cases it may disclose the necessity for finding further evidence. As the various arguments summarized in the notes are of different strength and forcefulness, it is well in arranging them to remember the fact that the strongest position in any group is at the end, and the next strongest at the beginning. Subject to this fact, the best arrangement within each group, and the arrangement of the groups constituting the main issues, is by climax, that is, from the less to the more strong. In the arrangement of material for the side which one supports it is essential to keep in mind the arguments of the opposition, and to consider where each of these may best be met. As a rule, the best place to refute an objection is either just before or just after the argument to which the objection is pertinent. This is especially true when one is sure that the objection can be met completely and disposed of at once. Lastly, the logic of the whole argumentative scheme must be tested by the careful preparation of a brief from the notes as finally arranged. The brief will show where further evidence may still be needed to support minor topics, and what importance should be attached to the various headings and subheadings. By it the whole case can be measured.

The Brief is simply the outline of an argument, arranged so as to show clearly the complete logical relationship of its parts.

In structure it is not unlike the massive stone piers that

support a bridge. Each pier is built for one purpose, namely, to support its share of the bridge. Each stone in the pier, from broad foundation to topmost layer, was placed there for one purpose—to support the stone directly above it and thus, indirectly, to sustain the bridge. Likewise, each stone in the pier is dependent upon one below it. Remove a single stone, and the pier is weakened; remove all the stones, the pier is gone; and with the loss of a pier the bridge falls in part or altogether.

In the brief the main proposition is the one thing to be supported; it is the bridge. This main proposition may be sustained by two or more subordinate propositions, and each of these subordinate propositions may be built up of subreasons depending on one another, just as the stones in each pier are interdependent. A few of the minor reasons may be removed and the main proposition may yet stand, but it has been weakened. The more complete the logical relationship of the minor propositions, the stronger is the support of the main proposition. The greater the number of minor propositions that have been omitted or poorly selected, the weaker the support of the main proposition. In drawing a brief, one must be sure, then, that each proposition acts as a close logical support for the one that immediately precedes, and is in turn logically supported by the one which follows.

The Brief of the Introduction. In briefing for an argument (which it is the purpose of the debater to substantiate) the main proposition is formulated in accordance with the rules already noted (see p. 12). Before it is stated, however, necessary introductory matter must be

outlined. What this matter should be is determined by the character of the question, and has already been discussed (see p. 14). For the typical method of outlining an introduction reference may be made to the specimen brief below.

The Brief Proper. Immediately following the brief of the introduction, the main proposition should be written out, followed by the word "Because." Following the word "Because," and reading as a logical reason for the main question, the first supporting proposition is stated and numbered A. (Other such propositions or reasons will be numbered B, C, etc.) Proposition A is followed by the word "For." The various arguments that support proposition A are designated by the figures I, II, III, etc., which read as reasons for A. But each of these reasons may in turn be supported by other reasons. The sub-reasons under I, II, III, respectively, are indicated by the letters and figures a, b, c, 1, 2, 3, etc., and read as logical reasons following the "For" at the end of I, II, III. Usually an analysis does not go beyond these three ranks of reasons. If it does, the next lower rank may be marked (a), (b), (c), etc., and the next (1), (2), (3), etc. The process should stop only when the fundamental reasons are reached. Although other indications of topics may be used, this is recommended as one of the best, and for the purpose of uniformity.

Specimen Brief. To illustrate one good form of briefing for an argument, suppose that the proposition is: "Freedom of the Press is necessary in a true Democracy."

INTRODUCTION

A. The terms to be defined are "Freedom of the Press," and "true Democracy."

I. Freedom of the Press means the right to print and publish anything not criminally libelous.

a. This permits the criticism of public servants, public policies, etc.

II. A true Democracy is a government whose ideal is perfect political equality and perfect equality of individual rights before the law.

a. This means that every man is a citizen, not a subject.

b. It means that every man has a perfect right to his own opinion.

c. It means that the common good only is sought.

B. The question has arisen out of recent conditions in the United States.

I. Magazines and newspapers have criticized with extreme severity everybody from the President down.

a. When the President has seen fit to take corporations to task, they have retorted through the press.

b. When he has gone hunting reporters have followed.

c. All state officials are watched for sensations.

II. The question has been asked, Should not the government prevent the publication of some or all of these articles?

C. The following facts, which are at the basis of the discussion, will be readily admitted:

I. The United States aims to be a true democracy.

II. The press wields a powerful influence.

III. This power is increasing.

IV. The power may be for good or for evil.

V. There is much criticism, both just and unjust, in the press.

MATERIAL FOR AN ARGUMENT

- VI. Present restrictions do not, by definition, interfere with the freedom of the press.
- VII. The sole restraint is accountability in the courts after publication has been made.
- D. The question resolves itself into an inquiry as to whether the power of the press is, on the whole, exercised for the good or for the evil of the citizens of the United States. Upon this question the affirmative and negative take issue.
 - I. The affirmative says that the power exercised by the press is and must be for good.
 - II. The negative says that the power exercised by the press is and must be for evil.

BRIEF PROPER

Freedom of the press is necessary in a true democracy. Because,

- A. True democracy requires that all forces have free play. For,
 - I. It is built upon the principle of an automatic, self-adjusting machine. For,
 - a. Every evil is believed to have its antidote.
 - b. Every free movement is believed to be self-corrective.
 - II. It is only through free play of forces that men can retain equal rights. For,
 - a. To check one force is to increase another.
 - b. To repress criticism is to encourage wrongdoing.
- B. True democracy presumes that every man's opinion is worth a hearing. For,
 - I. Every man is a citizen.
 - II. Every man has a voice in the government.
- C. Refutation. The statement that free criticism of the rich and those in authority is unnecessary and undesirable, is untrue. For,
 - I. Such a claim assumes that many people are vicious.
 - II. Some check upon those vested with riches and power is necessary and desirable. For,
 - a. They are not exempt from selfishness.
 - b. To leave them free from criticism would mean giving them greatly increased power for evil.

III. Publicity is the people's best defense.

IV. Serious abuse of the freedom of the press is already punishable as libel.

D. Through the press alone can the forces of opinion have free play.
For,

I. There is no other possible way to come before all the people at once. For,

a. Many will read the papers or magazines when they will not go to listen to a speaker.

b. Practically everybody reads or hears reading.

CONCLUSION

A. There need be no fear of unmanageable excess, when freedom of the press is coupled with responsibility before the country.

B. For the reasons stated, the decision should go to the affirmative.

Rules for Briefing. 1. Outline the introduction.

2. At the beginning of the brief proper state the main proposition followed by the word "Because."

3. Let each supporting proposition, for which sub-reasons are given, be followed by the word "For."

4. See that each supporting proposition reads as a logical reason for the main proposition, and that each sub-reason is a logical reason for the statement which it supports.

5. Make each proposition a complete, simple, declarative statement.

6. Never use the words "Hence" or "Therefore," in a brief. They reverse the order by making the main statement subordinate.

7. The brief should be so clear that a single reading of it will show the plan of the argument.

8. Avoid repetition and overlapping of topics.

9. Refutation should be briefed as a proposition along with the argument which is refuted. No set form need be followed, but the ordinary method is to state the argument of an opponent and follow it by words of denial, giving the reasons for the denial in the regular brief form. Proposition C in the specimen brief indicates a convenient method.

10. Never mark reasons or sub-reasons twice.

Briefing the Argument of Another. In briefing the argument of another it is first necessary to find the writer's main proposition. This may be easy or difficult; it depends upon the care that has been taken by the writer or speaker in the preparation of his argument. If the argument is a formal writing or a set speech, it is ordinarily not difficult to find the central theme and from it to frame an inclusive main proposition. But if the argument has been in whole or in part extemporaneous, or if there have been frequent interruptions, it is sometimes impossible to find a main proposition that will include everything. In the Webster-Hayne debate this condition is found. Mr. Webster was called away suddenly from a law case which he was arguing, and with little previous preparation he answered Mr. Hayne. But it is not always the extemporaneous speech that is weak in logic. Even in a set argument the writer or speaker may pay little attention to logic. Under such circumstances it may be necessary to use a very broad main proposition and give more attention to a careful choice of the main subheadings.

Likewise, in a hastily prepared argument or speech

it frequently happens that the speaker digresses. Such digressions may be indicated in the brief and merely outlined, or they may be omitted altogether. In briefing the argument of another the general rules previously laid down will apply. An insuperable difficulty in framing a brief according to the rules given shows a weakness in the argument.

Preparation of Team Brief and Argument for Debate.

The first requisite is that every member of the team acquaint himself thoroughly with the question. Each should draw a brief as carefully as if he alone were to debate the proposition. Only by such a process can he hope to be a strong member of the team, ready to meet any attack that may be made against his position. After each member of the team has worked out a careful individual brief, the team should work together in combining the material of the individual briefs into a team brief — a brief that is as nearly perfect as the team can make it. This team brief should then be divided into parts and a part assigned to each debater for his particular speech. Each should now make out a more minute brief of the part which is to be his special province. A card system of preserving material as it is collected should be used. By the time the team brief is begun, it is possible to arrange the material topically. Any new argument can then be noted on a card and filed under the proper topic, ready for use during the debate. This method of indexing is found especially convenient during the debate, for any argument can be easily found and slipped out. Many card systems are available, any one of which will serve the purpose.

Illustration of Card System. The following question was recently debated by two universities: "All corporations engaged in interstate commerce should be compelled to incorporate under federal laws." (The constitutionality of such a law is granted.) The team supporting the negative of this question made use of a card system, and their files showed that the material had been collected and classified as follows:

THE QUESTION

Definition. (Here everything was clearly defined and illustrated. Not only were dictionary definitions given, but the interpretations of men in authority.)

TOPICS FOR DISCUSSION

(This consisted of conspicuous headings under which the material could be filed as collected. These headings were:)

- a. Burden of proof.
- b. Present system adequate ; change unnecessary.
- c. Political and industrial centralization.
- d. Unjust to states.
- e. Deprives states of revenues.
- f. Unjust to small, honest corporations.
- g. Will cause business panic.
- h. Federal government not more efficient than state government.
- i. Change impracticable.
- j. Offers no remedy.
- k. Inconsistent.
- l. Unpopular.
- m. Our better remedy — License.

REFUTATION

(Here again subjects were arranged in the following order:)

- a. Uniformity not desirable.
- b. Increased legislation.
- c. National banks not an analogy.
- d. Radical.

This proved a workable and adjustable plan. The facts gleaned from all sources — books, magazines, newspaper clippings, and the like — were readily placed under their proper headings and thus made available for hasty reference.

SUGGESTED EXERCISES

1. Bring to class a good proposition on some current question. Be prepared to state where material may be found; the main arguments in favor of the proposition; what, in general, would be necessary to support the main arguments; the arguments that might be brought up against these propositions, and how these objections could be refuted.

2. Suggest a good proposition for a discussion before one of the following:

- a. A college literary society.
- b. A boys' club.
- c. A municipal good government league.
- d. An engineering, technical, or scientific society.
- e. A high-school society.
- f. A federation of labor meeting.
- g. A meeting of municipal engineers.
- h. A meeting of tax reformers.
- i. A board of trade meeting.
- j. A meeting of political economists.
- k. A women's literary club.
- l. A meeting of associated charities.

3. Analyze Mr. Douglas's "Rejoinder" in the Alton debate, pages 287 ff, to show the mass of material he had in hand for refutation. Note carefully all methods used in refutation.

4. Find illustrations of refutation from the selections, pages 121 ff. Are they successful?

5. Make a brief of the affirmative or the negative side of the question on page 106.

6. Write out the argument.

7. Make a brief on the negative side of the proposition: "Freedom of the Press is necessary in a true Democracy."

8. Brief as completely as you can one supporting proposition in support of, or opposed to, one of the following propositions:

- a. Newspaper and magazine advertising brings better results than signboard advertising.
- b. The liberal-arts course in college should be shortened to three years.
- c. Medical colleges should require two years of preparation in general college work before admitting students.
- d. Manual training should be introduced into all high schools.
- e. A college education pays.
- f. Congress should appropriate funds for making the Ohio River navigable for large boats.
- g. State judges should be appointed for life.
- h. The United States Navy should be increased.

(By arranging all the propositions handed in on any single subject, a longer "patchwork" brief may be made.)

9. Frame a good proposition for debate and show what main arguments would be needed to support it. How might these arguments be refuted?

10. It is assumed that the student will brief one or more of the debates in Part II. of this book, as the instructor directs.

CHAPTER VII

THE EXPRESSION OF AN ARGUMENT

The Place of Rhetoric. It has frequently happened that a debate team, though stronger in logic and argument, has lost because the weaker side has been much more skillful in presentation. Too often, debaters do not give themselves sufficient individual and team practice before the final debate. While each speaker must present his argument in his own way, this does not mean that he need give manner no thought and attention. He must know his audience and decide what will be most effective in introducing himself and his question, must find out his faults in voice and delivery, and must strive to correct them — preferably with, but if necessary without, another's criticism. Reading the argument aloud, or delivering the speech before empty chairs or in front of a mirror, or to the boisterous waves of the sea, as did Demosthenes, is a help to self-improvement not to be despised. The help of a friendly critic is better. But rhetorical excellence is not the chief thing. It should be attended to without losing sight of the chief purpose which the speaker has in view, namely, to bring other people to his way of thinking. The speech may be smooth, well delivered, and rounded out with fine periods and climaxes, and yet may not convince or persuade: the audience may go away admiring the rhetorical qualities alone. Gestures which are

merely tacked on, periods which are clearly dragged in, and oratory which is wholly imitative, will accomplish little.

Elements of Persuasion. If the one who asserts a proposition has a special right to speak, either because he has made an exhaustive examination of the subject, or because his experience and training have fitted him to speak as one having authority, he may without undue assumption give this information to his audience by stating his experience. Personal experience is authentic. Students do not sufficiently utilize it in their discussions, even when it would be pertinent and convincing. A superintendent of a state prison would speak with the greatest effect on the subject of capital punishment, for instance, if he spoke solely of his experience with certain classes of prisoners as their superintendent.

At a recent convention two prominent men spoke. One was brought to address the convention merely because he was a man of national reputation. He admitted the fact that he was to speak upon a subject with which he was not particularly familiar, because he had never worked in that particular field and his information had come only from general reading and observation. The second speaker had had ten years of experience and was a recognized authority. He informed the audience that he spoke because he knew the facts. Although the first speaker had a wider national reputation, the words of the second speaker carried more conviction with them. Instead of considering this announcement of authority to speak as egotistical, the audience accepted it as something upon

which they could rely when it came to considering the question for themselves.

If, for any reason, the audience is hostile to the speaker or his cause, his first duty, and that not always an easy one, is to overcome existing prejudice. If the speaker is a stranger, he must gain the confidence of his hearers. A familiar, conversational attitude helps to gain confidence, and so does belief in the worth of one's message. Directness, candor, simplicity, and sincerity will usually win a hearing without the help of artifice.

When Abraham Lincoln made his speech at Columbus, Ohio, in September, 1859, he began as follows:

FELLOW CITIZENS OF THE STATE OF OHIO: I cannot fail to remember that I appear for the first time before an audience in this now great state — an audience that is accustomed to hear such speakers as Corwin and Chase and Wade and many other renowned men; and, remembering this, I feel that it will be well for you, as for me, that you should not raise your expectations to that standard to which you would have been justified in raising them had one of these distinguished men appeared before you. You would, perhaps, be only preparing a disappointment for yourselves, and, as a consequence of your disappointment, mortification to me. I hope, therefore, that you will commence with very moderate expectations; and, perhaps, if you will give me your attention, I shall be able to interest you to a moderate degree.

In his speech delivered at Chicago, July 9, 1858, Senator Stephen A. Douglas uses the following characteristic introduction:

MR. CHAIRMAN AND FELLOW CITIZENS: I can find no language which can adequately express my profound gratitude for the magnificent welcome which you have extended to me on this occasion. This vast sea of human faces indicates how deep an interest is felt by our people in the great questions which agitate the public mind, and which underlie the foundation of our free institutions. A reception like this,

so great in numbers that no human voice can be heard by its countless thousands, so enthusiastic that no one individual can be the object of such enthusiasm — clearly shows that there is some great principle which sinks deep into the heart and involves the rights and liberties of the whole people, that has brought you together with a unanimity and a cordiality never before excelled, if, indeed, equaled on any occasion. I have not the vanity to believe that it is any personal compliment to me.

It is an expression of your devotion to that great principle of self-government, to which my life for many years past has been, and in the future will be, devoted. If there is any one principle dearer and more sacred than all the others in free government, it is that which asserts the exclusive right of a free people to form and adopt their own fundamental law, and to manage and regulate their own internal affairs and domestic institutions.

Statement of Position. If the audience is hostile either to the speaker or to his subject, it is not always safe for the speaker to state his position at the beginning. But after the audience is won and the argument is so presented that the conclusion must follow, the probability is that the audience will accept it. They will, at least, give a fair consideration. All successful salesmen recognize this fact. The man who has a book to sell does not go to the door, book in hand, and say to the lady of the house, "I want to sell this book." He keeps the book concealed, and by skillful persuasion finally wins the attention of his hearer. The successful charity worker does not go to the self-made business man and say, point-blank, "Will you give ten dollars to our guild?" Not by any means! She tells him of the deplorable conditions and how these conditions can be relieved. She shows him how the boy of ten, who is making his own way and at the same time helping a small sister, merits some encouragement. Simply because the

business man has made his own way, he can appreciate what a little aid may do for an ambitious orphan boy.

One can easily see that in the following selection the writer is aware that he must use every effort to forestall an unfavorable reception of his idea. He tries to prevent surprise. He delays announcing his proposition. He is careful to accord Washington his just meed of praise before bringing Adams forward as a claimant for Washington's title.

We are accustomed to call Washington the "Father of his country." It would be useless, if one desired to do so, to dispute his right to the title. He and no other will bear it through the ages. He established our country's freedom with the sword, then guided its course during the first critical years of its existence. No one can know the figure without feeling how real is its greatness. It is impossible to see how, without Washington, the nation could have ever been. His name is and should be greatest. But after all is "Father of his country" the best title for Washington? Where and what was Washington during those long preliminary years when the nation was taking form? A quiet planter, who in youth as a surveyor had come to know the woods; who in his young manhood had led bodies of provincials with some efficiency in certain unsuccessful military expeditions; who in maturity had sat, for the most part in silence, among his talking colleagues in the House of Burgesses, with scarcely a suggestion to make in all the sharp debate, while the nation was shaping. There is another character in our history to whom was once given the title "Father of America," a man to a large extent forgotten, his reputation overlaid by that of those who followed him, — no other than this man of the town meeting — Samuel Adams. As far as the genesis of America is concerned, Samuel Adams can more properly be called the "Father of America" than Washington. —
HOSMER: Samuel Adams.

Conclusion. The close of an argument should be the most effective part. The concluding paragraph in particular should be crowded with meaning; it is the final

word that leaves its impression on the hearer. The audience expects the lines of the argument to be brought together in such a way that it can get a concise and clearly defined perspective of the whole. The concluding remarks should contain enough recapitulation to remind the hearer of the various arguments and their relative values. At the same time the speaker must carry forward into the closing sentences the same spirit and enthusiasm which he has manifested throughout the debate. He must not permit the interest of the audience to be chilled by a summary that is perfunctory and spiritless. There will be no trouble about this if the conclusion has been carefully considered. The earnest debater in command of his subject will reach the proper degree of enthusiasm without conscious effort. He may even need to restrain his ardor a bit, for he may "lose his head," not because he has nothing to say, but because he has too much and attempts to accomplish more than is possible in the short time at his disposal.

Occasionally in the conclusion a purely emotional appeal is made with telling effect. The following will illustrate:

I sometimes think how it would be if multitude were taken away and we saw in its simplicity that which often loses itself in the large variety in which it is manifested to us. Suppose there were but one needy child in all the world. Suppose every child from China to Peru were wrapped in the soft care and tender luxury which belong to children in their parents' arms. Suppose every babe were cooing itself to rest in its mother's embrace, and every little boy were looking up into the face of a father's sympathy for the first manifestation of a truth that was to make him strong. Then suppose that somewhere, anywhere, upon our earth, there came one cry of a poor, wronged, needy child.

Can you not be sure that all humanity would lift itself up and never be satisfied until that child was aided? Is it less pathetic, is it less appealing, because they are here by the million instead of one or two? If one of those little creatures that the doctor read to us about had stood alone in all the generations of humanity, how infinitely pathetic it would have been! How you all would have stood up and said, "Where is that child? Where is that child? Life shall not be life to us until we have relieved it, until those poor limbs have been straightened and those arms made strong, until those bleared eyes have been taught to see, and that voice has sung some of the first beginnings of the song of life." Well, there are hundreds and thousands and millions of them. They look up to you from the gutter as you walk the street. They look into the face of the good, kind judge as he sits upon his bench. They come stretching out their poor sick arms to the doctors in the hospitals, and you can help them. You can help them. Help them just as you would if there were only one of them, by giving your sympathy, your blessing, your loud praise, and your large contributions to the Children's Aid Society. — PHILLIPS BROOKS: *Essays and Addresses*.

Speeches in Rebuttal. In an argument to the jury, the counsel is limited to facts brought out in the evidence. He may use any material as long as it is for the purpose of argument or illustration, but when he presents his case he cannot go beyond the evidence already introduced. The same rule of law or of ethics (for it is both) should apply to rebuttal speeches in general argument and debate. A rebuttal speech should be honestly confined to arguments already set forth. To introduce into a final speech in rebuttal new material that has been carefully reserved for the purpose is dishonest. Judges of debate will usually disregard new arguments thus introduced, and sometimes will discount the standing of debaters who violate the rule.

Two Methods in Rebuttal. Two possibilities are open to the debater when he comes to his rebuttal speech. On the one hand, he may briefly and clearly restate his own arguments; on the other hand, he may refute as many opposing arguments as he can. In the best rebuttal speeches both of these things are done. The advantage gained by using both methods is obvious. If the speaker occupies his whole time in refuting arguments that have been made against him, the audience may lose sight of the strong points in his favor. A debater sometimes makes the mistake of trying to refute all arguments, important and unimportant, that have been brought out by the opposition, losing, and causing his audience to lose, all sense of proportion; he delivers a series of short, testy sentences, each on a different point, and all amounting to little more than a categorical denial. Every debater who has studied his question thoroughly knows the danger points and knows whether his side of the debate has been seriously damaged in any respect. He will not lose time which might be spent in enforcing his own case, or in a renewed attack on the chief arguments of his opponent, by putting up defenses where defenses are already sufficiently strong. If a football team is to stop a play, the interference of the opposing team must be broken and the man with the ball must be "downed." If the opponents were tackled promiscuously the man with the ball would probably escape and cross the goal line. The same is true for rebuttal. The one who would refute successfully must find the real argument of his opponent and direct his final attack against that argument. If he attempts to

deal with all the minor statements, the principal argument is likely to escape untouched. When the attempt is made to answer all manner of statements, large and small, the effect may be actually to magnify the importance of the other side; the hearer may come to believe the opposite side stronger than he had thought, and he may be reminded of minor arguments which he had forgotten. In this way the debater is sometimes unnecessarily kind to his opponents.

SUGGESTED EXERCISES

1. Read Henry Ward Beecher's Speech at Liverpool, and point out elements of persuasion in it.

2. Write an argument inducing —

- a. A student to give for an athletic debt.
- b. A senior to give toward a class memorial.
- c. A laborer to join a union.
- d. A Republican friend to vote for a Democratic mayor.
- e. A student to pledge a sum toward a student building.
- f. An exceedingly studious boy to take part in athletics.
- g. A childless couple to adopt an orphan.

3. Bring to class a selection from newspaper, magazine, or book containing elements of persuasion. Discuss its effectiveness as to various classes of readers.

4. Find instances of persuasion in the selections, pages 121 ff. Analyze for effectiveness.

5. A man is charged with a crime. You are defending him and believe him innocent. Write a closing paragraph of appeal to the jury.

6. You are interested in the establishment of a charitable institution. A wealthy audience is before you. Write an appeal.

7. A prisoner was convicted and sentenced to life imprisonment on ambiguous evidence. He has served twenty-five years faithfully and obediently and is now an old man. Thanksgiving Day is near and the prisoner's family are preparing for it. Write a letter to the governor asking for the old man's pardon.

PART II

I. THE HENRY-MADISON DEBATE

THE HENRY-MADISON DEBATE

After the great Federal Convention had adjourned on the 17th of September, 1787, the new Constitution, which had been adopted after many fierce debates and many compromises, was presented to the Continental Congress then in session in New York city. It remained before that body for eight days of violent discussion. At the expiration of that time it was voted that the new Constitution and Washington's letter, which had accompanied it to Congress, "be transmitted to the several legislatures, in order to be submitted to a convention of delegates in each state by the people thereof, in conformity to the resolves of the convention." To the various states it went, therefore, for ratification. One after another, Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, and South Carolina ratified it. All eyes were then turned toward the most popular and the most influential of the thirteen original states — Virginia, the home of Washington.

The Virginia convention was called June 2, 1788, at Richmond. The leader of the forces opposing the adoption of the Constitution was Patrick Henry. His great opponent was James Madison. In the following debate these champions met on the floor of the convention. The discussion by these and other members lasted for more than three weeks, but on June 25 a vote was taken which resulted in the adoption of the Constitution — 89 for, 79 against.

SPEECH OF PATRICK HENRY

(In the Virginia Convention, on the Adoption of the Constitution.)

MR. CHAIRMAN: I wish I were possessed of talents or possessed of anything that might enable me to elucidate this great subject. I am not free from suspicion; I am apt to entertain doubts. I arose yesterday to ask a question which arose in my own mind. When I asked that question I thought the meaning 5 of my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederation. It is otherwise most clearly a consolidated government. The ques- 10 tion turns, sir, on that poor little thing — the expression, "We, the people," instead of the states of America. I need not take much pains to show that the principles of this system are extremely pernicious, impolitic, and dangerous.

There are sufficient guards placed against sedition and licen- 15 tiousness; for, when power is given to this government to suppress these, or for any other purpose, the language it assumes is clear, express, and unequivocal; but when this Constitution speaks of privileges, there is an ambiguity, sir, a fatal ambiguity — an ambiguity which is very astonishing. In the clause under 20 consideration there is the strangest language that I can conceive. I mean, when it says there shall not be more representatives than one for every thirty thousand. Now, sir, how easy is it to evade this privilege! "The number shall not exceed one for every thirty thousand." This may be satisfied by one repre- 25 sentative from each state. Let our numbers be ever so great, this immense continent may, by this artful expression, be reduced to have but thirteen representatives. I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and 30

unequivocally expressed that they should be entitled to have one for every thirty thousand? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases and a state shall send representatives in this proportion, Congress may remand them, 5 because the right of having one for every thirty thousand is not clearly expressed. This possibility of reducing the number to one for each state approximates to probability by that other expression — “but each state shall at least have one representative.” Now, is it not clear that, from the first expression, 10 the number might be reduced so much that some states should have no representation at all were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they may restrain the number to one from each state. Perhaps the same horrors may hang over 15 my mind again. I shall be told I am continually afraid: but, sir, I have strong cause of apprehension. In some parts of the plan before you the great rights of freemen are endangered; in other parts absolutely taken away. How does your trial by jury stand? In civil cases gone — not sufficiently secured in 20 criminal — this best privilege is gone. But we are told we need not fear, because those in power, being our representatives, will not abuse the powers we put in their hands. I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of 25 the people, or by the tyranny of rulers. I imagine, sir, you will find the balance on the side of tyranny. Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism. 30 Most of the human race are now in this deplorable condition; and those nations who have gone in search of grandeur, power, and splendor, have also fallen a sacrifice, and been the victims of their own folly. While they acquired those visionary blessings they lost their freedom.

My great objection to this government is, that it does not leave us the means of defending our rights or of waging war against tyrants. It is urged by some gentlemen that this new plan will bring us an acquisition of strength — an army, and the militia of the states. This is an idea extremely ridiculous: 5 gentlemen cannot be earnest. This acquisition will trample on our fallen liberty. Let my beloved Americans guard against this fatal lethargy that has pervaded the universe. Have we the means of resisting disciplined armies, when our only defense, the militia, is put into the hands of Congress? The honorable 10 gentleman said that great danger would ensue if the Convention rose without adopting this system. I ask, Where is that danger? I see none. Other gentlemen have told us, within these walls, that the union is gone or that the union will be gone. Is not this trifling with the judgment of their fellow citizens? Till they tell us the 15 grounds of their fears I will consider them as imaginary.

I rose to make inquiry where those dangers were. They could make no answer; I believe I never shall have that answer. Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult 20 in Virginia? Have not the people of Virginia, when laboring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more awful than their unanimous acquiescence under general distresses? Is there any revolution 25 in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday when our enemies marched in triumph through our country; yet the people of this country could not be appalled by their pompous armaments. They stopped their career and victoriously captured 30 them. Where is the peril now, compared to that? Some minds are agitated by foreign alarms. Happily for us there is no real danger from Europe; that country is engaged in more arduous business. From that quarter there is no cause for fear. You may sleep in safety forever for them. 35

Where is the danger? If, sir, there is any, I recur to the American spirit to defend us; that spirit which has enabled us to surmount the greatest difficulties. To that illustrious spirit I address my most fervent prayer to prevent our adopting a system destructive to liberty. Let not gentlemen be told that it is not safe to reject this government. Wherefore is it not safe? We are told there are dangers, but those dangers are ideal; they cannot be demonstrated. To encourage us to adopt it they tell us there is a plain, easy way of getting amendments. When I come to contemplate this part, I suppose that I am mad, or that my countrymen are so. The way to amendment is, in my conception, shut. Let us consider this plain, easy way. "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as a part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the 1st and 4th clauses in the 9th section of the last article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

Hence it appears that three-fourths of the states must ultimately agree to any amendments that may be necessary. Let us consider the consequence of this. However uncharitable it may appear, yet I must tell my opinion — that the most unworthy characters may get into power and prevent the introduction of amendments. Let us suppose — for the case is supposable, possible, and probable — that you happened to deal those powers to unworthy hands; will they relinquish powers already in their possession, or agree to amendments? Two-thirds of the Congress, or of the state legislatures, are

necessary even to propose amendments. If one-third of these be unworthy men they may prevent the application for amendments; but what is destructive and mischievous is, that three-fourths of the state legislatures or of the state conventions must concur in the amendments when proposed! In such numerous bodies there must necessarily be some designing, bad men. To suppose that so large a number as three-fourths of the states will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or even in such as would bear some likeness to one another; for four of the smallest states, that do not collectively contain one-tenth part of the population of the United States, may obstruct the most salutary and necessary amendments. Nay, in these four states, six-tenths of the people may reject these amendments; and suppose that amendments shall be opposed to amendments, which is highly probable, — is it possible that three-fourths can ever agree to the same amendments? A bare majority in these four small states may hinder the adoption of amendments; so that we may fairly and justly conclude that one-twentieth part of the American people may prevent the removal of the most grievous inconvenience and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, sir, a most fearful situation when the most contemptible minority can prevent the alteration of the most oppressive government; for it may, in many respects, prove to be such. Is this the spirit of republicanism?

What, sir, is the genius of democracy? Let me read that clause of the bill of rights of Virginia which relates to this (3d clause): — That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or the community. Of all the various modes and forms of government, that is best which is capable of producing the

greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that whenever any government shall be found inadequate, or contrary to those purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it in such manner as shall be judged most conducive to the public weal."

This, sir, is the language of democracy — that a majority of the community have a right to alter government when found to be oppressive. But how different is the genius of your new Constitution from this! How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority! If, then, gentlemen standing on this ground are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion of the majority I must submit; but to me, sir, it appears perilous and destructive. I cannot help thinking so. Perhaps it may be the result of my age. These may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, sir, amendments are left to the twentieth, or tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practiced in the House of Commons in England, and that many of the members raise themselves to preferments by selling the rights of the whole of the people. But, sir, the tenth part of that body cannot continue oppressions on the rest of the people. English liberty is, in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one-tenth of the people to any alteration, however judicious. The honorable gentleman who presides told us that, to prevent abuses in our government, we will assemble in convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them. O, sir, we should have fine times indeed, 35

if, to punish tyrants, it were only sufficient to assemble the people! Your arms, wherewith you could defend yourselves, are gone; and you have no longer an aristocratical, no longer a democratical spirit. Did you ever read of any revolution in a nation, brought about by punishment of those in power, inflicted 5 by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America.

A standing army we shall have, also, to execute the execrable commands of tyranny; and how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your mace bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a 15 power of direct taxation, unbounded and unlimited, exclusive power of legislation in all cases whatsoever for ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dockyards, etc. What resistance could be made? The attempt would be madness. You will find all the strength 20 of this country in the hands of your enemies; their garrisons will naturally be the strongest places in the country. Your militia is given up to Congress, also, in another part of this plan. They will therefore act as they think proper; all power will be in their possession. You cannot force them to receive 25 their punishment. Of what service would militia be to you, when, most probably, you will not have a single musket in the state? As arms are to be provided by Congress they may or may not furnish them.

Let me here call your attention to that part which gives the 30 Congress power "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers and the authority of training the militia according to the discipline 35

prescribed by Congress." By this, sir, you see their control over our last and best defense is unlimited. If they neglect or refuse to arm or discipline our militia, they will be useless. The states can do neither, this power being exclusively given to Congress. The power of appointing officers over men not disciplined or armed is ridiculous; so that this pretended little remains of power left to the states may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed; nor can we ever expect to get this government amended, since I have already shown that a very small minority may prevent it, and that small minority interested in the continuance of the oppression. Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example where rulers overcharged with power willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes the oppressed have got loose by one of those bloody struggles that desolate a country; but a willing relinquishment of power is one of those things which human nature never was, nor ever will be, capable of.

When the American spirit was in its youth, the language of America was different. Liberty was then, sir, the primary object. We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of everything. That country is become a great, mighty, splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors; by that spirit we have triumphed over every difficulty. But now, sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country into a powerful and mighty empire. If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your government will

not have sufficient energy to keep them together. Such a government is incompatible with the genius of republicanism. There will be no checks, no real balances in this government. What can avail your specious, imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? 5 But, sir, we are not feared by foreigners; we do not make nations tremble. Would this constitute happiness, or secure liberty? I trust, sir, our political hemisphere will ever direct their operations to the security of those objects.

Consider our situation, sir. Go to the poor man, and ask him 10 what he does. He will inform you that he enjoys the fruits of his labor, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of society, — you will find the same tranquil ease and content; you will find no alarms or disturbances. Why, then, tell us of 15 danger, to terrify us into an adoption of this new form of government? And yet who knows the dangers that this new system may produce? They are put out of the sight of the common people, who cannot foresee latent consequences. I dread the operation of it on the middle and lower classes of people; it is 20 for them I fear the adoption of this system.

I fear I tire the patience of the committee; but I beg to be indulged with a few more observations. When I thus profess myself an advocate for the liberty of the people, I shall be told I am a designing man, that I am to be a great man, that I am 25 to be a demagogue; and many similar illiberal insinuations will be thrown out. But, sir, conscious rectitude outweighs those things with me. I see great jeopardy in this new government. I see none from our present one. I hope some gentleman or other will bring forth in full array those dangers, if there be 30 any, that we may see and touch them.

I have said that I thought this a consolidated government; I will now prove it. Will the great rights of the people be secured by this government? Suppose it should prove oppressive, how can it be altered? Our bill of rights declares, "that 35

a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."

I have just proved that one-tenth, or less, of the people of America — a most despicable minority — may prevent this 5 reform or alteration. Suppose the people of Virginia should wish to alter their government; can a majority of them do it? No; because they are connected with other men, or, in other words, consolidated with other states. When the people of Virginia, at a future day, shall wish to alter their government, 10 though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States. The founders of your own Constitution made your government changeable; but the power of changing it is gone from you. Whither is it gone? It is placed in the 15 same hands that hold the rights of twelve other states, and those who hold these rights have right and power to keep them. It is not like the particular government of Virginia; one of the leading features of that government is, that a majority can alter it, when necessary for the public good. This government is not a 20 Virginian, but an American government. Is it not, therefore, a consolidated government? The sixth clause of your bill of rights tells you, "that elections of members to serve as representatives of the people in Assembly ought to be free, and that all men having sufficient evidence of permanent common interest 25 with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not in like manner assented for the public good." But what 30 does this Constitution say? The clause under consideration gives an unlimited and unbounded power of taxation. Suppose every delegate from Virginia opposes a law laying a tax; what will it avail? They are opposed by a majority; eleven members can destroy their efforts; those feeble ten cannot prevent the 35

passing of the most oppressive tax law; so that, in direct opposition to the spirit and express language of your declaration of rights, you are taxed, not by your own consent, but by people who have no connection with you.

The next clause of the bill of rights tells you, "that all power 5 of suspending law or the execution of laws, by any authority without the consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." This tells us that there can be no suspension of government or laws without our own consent; yet this Constitution can counteract 10 and suspend any of our laws that contravene its oppressive operation; for they have the power of direct taxation which suspends our bill of rights; and it is expressly provided that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and consti- 15 tutions of the states. Consider how the only remaining defense we have left is destroyed in this manner. Besides the expenses of maintaining the Senate and other house in as much splendor as they please, there is to be a great and mighty President, with very extensive powers — the powers of a king. He is to be 20 supported in extravagant magnificence; so that the whole of our property may be taken by this American government, by laying what taxes they please, giving themselves what salaries they please, and suspending our laws at their pleasure. I might be thought too inquisitive, but I believe I should take up very 25 little of your time in enumerating the little power that is left to the government of Virginia, for this power is reduced to little or nothing. Their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the states; their ten miles square, with all the fine ornaments of human 30 life, added to their powers, and taken from the states, will reduce the power of the latter to nothing.

In this scheme of energetic government the people will find two sets of taxgatherers — the state and the federal sheriffs. This, it seems to me, will produce such dreadful oppression as 35

the people cannot possibly bear. The federal sheriff may commit what oppression, make what distresses, he pleases, and ruin you with impunity; for how are you to tie his hands? Have you any sufficient decided means of preventing him from sucking your blood by speculations, commissions, and fees? Thus 5 thousands of your people will be most shamefully robbed. Our state sheriffs, those unfeeling bloodsuckers, have, under the watchful eye of the legislature, committed the most horrid and barbarous ravages on our people. It has required the most constant vigilance of the legislature to keep them from totally 10 ruining the people; a repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions; and as often has their nefarious ingenuity devised methods of evading the force of those laws. In the struggle they have generally triumphed over the legislature. 15

It is a fact that lands have been sold for five shillings which were worth one hundred pounds. If sheriffs, thus immediately under the eye of our state legislature and judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New York? If they 20 perpetrate the most unwarrantable outrage on your personal property you cannot get redress on this side of Philadelphia or New York; and how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to judges sworn to support this Constitution in opposition to 25 that of any state, and who may also be inclined to favor their own officers. When these harpies are aided by excisemen who may search, at any time, your houses and most secret recesses, will the people bear it? If you think so you differ from me. Where I thought there was a possibility of such mischiefs I 30 would grant power with a niggardly hand; and here there is a strong probability that these oppressions shall actually happen. I may be told that it is safe to err on that side, because such regulations may be made by Congress as shall restrain these officers, and because laws are made by our representatives, and 35

judged by righteous judges. But, sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not. I shall therefore be an infidel on that point till the day of my death.

This Constitution is said to have beautiful features; but 5 when I come to examine these features, sir, they appear to me to be horribly frightful. Among other deformities it has an awful squinting; it squints towards monarchy; and does not this raise indignation in the breast of every true American?

Your President may easily become king. Your Senate is so 10 imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority, and a very small minority may continue forever unchangeably this government, although horribly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is 15 on a supposition that your American governors shall be honest that all the good qualities of this government are founded; but its defective and imperfect construction puts it in their power to perpetrate the worst of mischiefs, should they be bad men; and, sir, would not all the world, from the eastern to the western 20 hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty! I say that the loss 25 of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

If your American chief be a man of ambition and abilities, how easy it is for him to render himself absolute! The army is in his hands, and if he be a man of address it will be attached 30 to him, and it will be the subject of long meditation with him to seize the first suspicious moment to accomplish his design. And, sir, will the American spirit solely relieve you when this happens? I would rather infinitely — and I am sure most of this convention are of the same opinion — have a king, lords, 35

and commons, than a government so replete with such insupportable evils. If we make a king we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the President, in the field at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience think of this idea. If ever he violates the laws one of two things will happen: he will come at the head of his army, to carry everything before him; or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of everything, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, sir, where is the existing force to punish him? Can he not at the head of his army beat down every opposition? Away with your President! we shall have a king! The army will salute him monarch! Your militia will leave you and assist in making him king, and fight against you! And what have you to oppose this force? What will become of you and your rights? Will not absolute despotism ensue?

What can be more defective than the clause concerning the elections? The control given to Congress over the time, place, and manner of holding elections will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the state; or they may be at remote distances from those who have a right of suffrage. Hence, nine out of ten must either not vote at all or vote for strangers; for the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat, that the control of Congress over the manner, etc., of electing well warrants this idea. The natural consequence will be, that this democratic branch will possess none of the public confidence; the people will be prejudiced against representatives chosen in such an injudicious

manner. The proceedings in the northern conclave will be hidden from the yeomanry of this country. We are told that the yeas and nays shall be taken, and entered on the journals. This, sir, will avail nothing. It may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy. They may think, and will think, the whole requires it. 5

Another beautiful feature of this Constitution is the publication from time to time of the receipts and expenditures of the public money. This expression, from time to time, is very 10 indefinite and indeterminate: it may extend to a century. Grant that any of them are wicked; they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say they may ruin you; for where is the responsibility? The yeas and nays will show you nothing, unless 15 they be fools as well as knaves; for, after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and divulge their iniquity when they have it equally in their power to suppress and conceal it. Where is the responsibility — that leading principle in the 20 British government? In that government a punishment certain and inevitable is provided; but in this there is no real, actual punishment for the grossest mal-administration. They may go without punishment though they commit the most outrageous violation on our immunities. That paper may tell me 25 they will be punished. I ask, By what law? They must make the law, for there is no existing law to do it. What! will they make a law to punish themselves?

This, sir, is my great objection to the Constitution, that there is no true responsibility, and that the preservation of our 30 liberty depends on the single chance of men being virtuous enough to make laws to punish themselves.

MR. MADISON'S REPLY TO MR. HENRY

I shall not attempt to make impressions by any ardent professions of zeal for the public welfare. We know the principles of every man will, and ought to, be judged not by his professions and declarations, but by his conduct; by that criterion, I mean, in common with every other member, to be 5 judged; and should it prove unfavorable to my reputation, yet it is a criterion from which I will by no means depart. Comparisons have been made between the friends of this Constitution and those who oppose it. Although I disapprove of such comparisons, I trust that, in point of truth, honor, candor, 10 and rectitude of motives, the friends of this system here and in other states are not inferior to its opponents. But professions of attachment to the public good, and comparisons of parties, ought not to govern or influence us now. We ought, sir, to examine the Constitution on its own merits solely. We are to 15 inquire whether it will promote the public happiness ; its aptitude to produce this desirable object ought to be the exclusive subject of our present researches. In this pursuit, we ought not to address our arguments to the feelings and passions, but to those understandings and judgments which were selected by 20 the people of this country, to decide this great question by a calm and rational investigation.

I hope that gentlemen, in displaying their abilities on this occasion, instead of giving opinions and making assertions, will condescend to prove and demonstrate by a fair and regular 25 discussion. It gives me pain to hear gentlemen continually distorting the natural construction of language; for it is sufficient if any human production can stand a fair discussion. Before I proceed to make some additions to the reasons which have been adduced by my honorable friend over the way, I must take the 30

liberty to make some observations on what was said by another gentleman [Mr. Henry].

He told us that this Constitution ought to be rejected because it endangered the public liberty, in his opinion, in many instances. Give me leave to make answer to that observation. Let the dangers which this system is supposed to be replete with be clearly pointed out. If any dangerous and unnecessary powers be given to the general legislature, let them be plainly demonstrated; and let us not rest satisfied with general assertions of danger, without examination. If powers be necessary, apparent danger is not a sufficient reason against conceding them. He has suggested that licentiousness has seldom produced the loss of liberty, but that the tyranny of rulers has almost always affected it. Since the general civilization of mankind I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations; but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions which, in republics, have, more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear that the same causes may terminate here in the same fatal effects which they produced in those republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression.

I must confess I have not been able to find his usual con-

sistency in the gentleman's argument on this occasion. He informs us that the people of the country are at perfect repose; that is, every man enjoys the fruits of his labor peaceably and securely, and that everything is in perfect tranquillity and safety. I wish sincerely that this were true. If this be their 5 happy situation, why has every state acknowledged the contrary? Why were deputies from all the states sent to the general Convention? Why have complaints of national and individual distresses been echoed and reëchoed throughout the continent? Why has our general government been so shamefully disgraced 10 and our Constitution violated? Wherefore have laws been made to authorize a change, and wherefore are we now assembled here? A federal government is formed for the protection of its individual members. Ours has attacked itself with impunity. Its authority has been disobeyed and despised. 15

I think I perceive a glaring inconsistency in another of his arguments. He complains of this Constitution, because it requires the consent of at least three-fourths of the states to introduce amendments which shall be necessary for the happiness of the people. The assent of so many he urges as too great 20 an obstacle to the admission of salutary amendments, which, he strongly insists, ought to be at the will of a bare majority. We hear this argument, at the very moment we are called upon to assign reasons for proposing a constitution which puts it in the power of nine states to abolish the present inadequate, 25 unsafe, and pernicious Confederation. In the first case, he asserts that a majority ought to have the power of altering the government when found to be inadequate to the security of public happiness. In the last case, he affirms that even three-fourths of the community have not a right to alter a govern- 30 ment which experience has proved to be subversive of national felicity! nay, that the most necessary and urgent alterations cannot be made without the absolute unanimity of all the states! Does not the thirteenth article of the Confederation expressly require that no alteration shall be made without the unanimous 35

consent of all the states? Could anything in theory be more perniciously improvident and injudicious than this submission of the will of the majority to the most trifling minority? Have not experience and practice actually manifested this theoretical inconvenience to be extremely impolitic? Let me mention one fact which I conceive must carry conviction to the mind of any one. The smallest state in the union has obstructed every attempt to reform the government; that little member has repeatedly disobeyed and counteracted the general authority; nay, has even supplied the enemy of its country with provisions. Twelve states had agreed to certain improvements which were proposed, being thought absolutely necessary to preserve the existence of the general government; but as these improvements, though really indispensable, could not, by the Confederation, be introduced into it without the consent of every state, the refractory dissent of that little state prevented their adoption. The inconveniences resulting from this requisition of unanimous concurrence in alterations in the Confederation, must be known to every member in this convention; it is therefore needless to remind them of them. Is it not self-evident that a trifling minority ought not to bind the majority? Would not foreign influence be exerted with facility over a small minority? Would the honorable gentleman agree to continue the most radical defects in the old system, because the petty state of Rhode Island would not agree to remove them?

He next objects to the exclusive legislation over the district where the seat of government may be fixed. Would he submit that the representatives of this state should carry on their deliberations under the control of any other member of the Union? If any state had the power of legislation over the place where Congress should fix the general government, this would impair the dignity, and hazard the safety, of Congress. If the safety of the Union were under the control of any particular state, would not foreign corruption probably prevail in such a state to induce it to exert its controlling influence over the members

of the general government? Gentlemen cannot have forgotten the disgraceful insult which Congress received some years ago.¹ When we also reflect that the previous cession of particular states is necessary before Congress can legislate exclusively anywhere, we must, instead of being alarmed at this part, heartily 5 approve of it.

But the honorable member sees great danger in the provision concerning the militia. This I conceive to be an additional security to our liberty, without diminishing the power of the states in any considerable degree. It appears to me so highly 10 expedient that I should imagine it would have found advocates even in the warmest friends of the present system. The authority of training the militia and appointing the officers is reserved to the states. Congress ought to have the power to establish a uniform discipline throughout the states, and to 15 provide for the execution of the laws, suppress insurrections, and repel invasions. These are the only cases wherein they can interfere with the militia; and the obvious necessity of their having power over them in these cases must convince any reflecting mind. Without uniformity of discipline, military bodies 20 would be incapable of action; without a general controlling power to call forth the strength of the Union to repel invasions, the country might be overrun and conquered by foreign enemies; without such a power to suppress insurrections, our liberties might be destroyed by domestic faction, and domestic tyranny 25 be established.

The power of raising and supporting armies is exclaimed against as dangerous and unnecessary. I wish there were no necessity of vesting this power in the general government. But

¹ On June 21, 1783, eighty soldiers of the Pennsylvania troops broke from camp and marched into Philadelphia to demand their pay of the Continental Congress. They stopped before the house in which Congress was in session, passed around the grog, and began to hurl stones at the windows. Congress, defenseless, appealed for aid to the state; it was refused them. They then fled to New Jersey and sought refuge at Princeton College.

suppose a foreign nation were to declare war against the United States; must not the general legislature have the power of defending the United States? Ought it to be known to foreign nations that the general government of the United States of America has no power to raise and support an army, even in the utmost danger, when attacked by external enemies? Would not their knowledge of such a circumstance stimulate them to fall upon us? If, sir, Congress be not invested with this power, any powerful nation, prompted by ambition or avarice, will be invited by our weakness to attack us; and such an attack by disciplined veterans would certainly be attended with success, when only opposed by irregular, undisciplined militia. Whoever considers the peculiar situation of this country, the multiplicity of its excellent inlets and harbors, and the uncommon facility of attacking it, however much he may regret the necessity of such a power, cannot hesitate a moment in granting it. One fact may elucidate this argument. In the course of the late war, when the weak parts of the Union were exposed, and many states were in the most deplorable situation by the enemy's ravages, the assistance of foreign nations was thought so urgently necessary for our protection that the relinquishment of territorial advantages was not deemed too great a sacrifice for the acquisition of one ally. This expedient was admitted with great reluctance, even by those states who expected advantages from it. The crisis, however, at length arrived when it was judged necessary for the salvation of this country to make certain cessions to Spain; whether wisely or otherwise is not for me to say; but the fact was, that instructions were sent to our representative at the court of Spain, to empower him to enter into negotiations for that purpose. How it terminated is well known. This fact shows the extremities to which nations will go in cases of imminent danger, and demonstrates the necessity of making ourselves more respectable. The necessity of making dangerous cessions, and of applying to foreign aid, ought to be excluded.

The honorable member then told us that there are heart-burnings in the adopting states, and that Virginia may, if she does not come into the measure, continue in amicable confederacy with the adopting states. I wish as seldom as possible to contradict the assertions of gentlemen; but I can venture 5 to affirm, without danger of being in error, that there is the most satisfactory evidence that the satisfaction of those states is increasing every day, and that, in that state where it was adopted by only a majority of nineteen, there is not one-fifth of the people dissatisfied. There are some reasons which induce 10 us to conclude that the grounds of proselytism extend everywhere; its principles begin to be better understood; and the inflammatory violence wherewith it was opposed by designing, illiberal, and unthinking minds begins to subside. I will not enumerate the causes from which, in my conception, 15 the heart-burnings of a majority of its opposers have originated. Suffice it to say, that in all they were founded on a misconception of its nature and tendency. Had it been candidly examined and fairly discussed, I believe, sir, that but a very inconsiderable minority of the people of the United States 20 would have opposed it.

Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions, but the principal question is, whether it be a federal or a consolidated 25 government. In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is 30 a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not com- 35

pletely consolidated, nor is it entirely federal. Who are parties to it? The people — but not the people as composing one great body; but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously rejected it. Were it such a government as is suggested it would be now binding on the people of this state without their having had the privilege of deliberating on it. But, sir, no state is bound by it, as it is, without its own consent. Should all the states adopt it, it will be then a government established by the thirteen states of America, not through the intervention of the legislatures, but by the people at large. In this particular respect the distinction between the existing and the proposed governments is very material. The existing system has been derived from the dependent derivative authority of the legislatures of the states; whereas this is derived from the superior power of the people.

If we look at the manner in which alterations are to be made in it, the same idea is, in some degree, attended to. By the new system a majority of the states cannot introduce amendments, nor are all the states required for that purpose; three-fourths of them must concur in alterations. In this there is a departure from the federal idea. The members of the national House of Representatives are to be chosen by the people at large, in proportion to the numbers in the respective districts. When we come to the Senate, its members are elected by the states in their equal and political capacity. But had the government been completely consolidated, the Senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature; and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as of a mere confederacy. If Virginia were separated from all the

states, her power and authority would extend to all cases. In like manner, were all powers vested in the general government, it would be a consolidated government. But the powers of the federal government are enumerated; it can operate only in certain cases; it has legislative powers on 5 defined and limited objects, beyond which it cannot extend its jurisdiction.

But the honorable gentleman has satirized, with peculiar acrimony, the powers given to the general government by this Constitution. I conceive that the first question on this subject 10 is, whether these powers be necessary; if they be, we are reduced to the dilemma of either submitting to the inconvenience or losing the Union. Let us consider the most important of these reprobated powers; that of direct taxation is most generally objected to. With respect to the exigencies of the government there 15 is no question but the most easy mode of providing for them will be adopted. When, therefore, direct taxes are not necessary they will not be recurred to. It can be of little advantage to those in power to raise money in a manner oppressive to the people. To consult the convenience of the people will cost 20 them nothing, and in many respects will be advantageous to them. Direct taxes will only be recurred to for great purposes. What has brought on other nations those immense debts, under the pressure of which many of them labor? Not the expenses of their governments, but war. If this country should be 25 engaged in war, — and I conceive we ought to provide for the possibility of such a case, — how would it be carried on? By the usual means provided from year to year? As our imports will be necessary for the expenses of government and other common exigencies, how are we to carry on the means of defense? 30 How is it possible a war would be supported without money or credit? And would it be possible for a government to have credit without having the power of raising money? No. It would be impossible for any government, in such a case, to defend itself. Then, I say, sir, that it is necessary to establish 35

funds for extraordinary exigencies and to give this power to the general government; for the utter inutility of previous requisitions on the states is too well known. Would it be possible for those countries whose finances and revenues are carried to the highest perfection, to carry on the operations of government on great emergencies, such as the maintenance of a war, without an uncontrolled power of raising money? Has it not been necessary for Great Britain, notwithstanding the facility of the collection of her taxes, to have recourse very often to this and other extraordinary methods of procuring money? Would not her public credit have been ruined if it was known that her power to raise money was limited? Has not France been obliged, on great occasions, to use unusual means to raise funds? It has been the case in many countries, and no government can exist unless its powers extend to make provisions for every contingency. If we were actually attacked by a powerful nation, and our general government had not the power of raising money, but depended solely on requisitions, our condition would be truly deplorable. If the revenue of this commonwealth were to depend on twenty distinct authorities, it would be impossible for it to carry on its operations. This must be obvious to every member here. I think, therefore, that it is necessary, for the preservation of the Union, that this power shall be given to the general government.

But it is urged that its consolidated nature, joined to the power of direct taxation, will give it a tendency to destroy all subordinate authority; that its increasing influence will speedily enable it to absorb the state governments. I cannot think this will be the case. If the general government were wholly independent of the governments of the particular states, then, indeed, usurpation might be expected to the fullest extent. But, sir, on whom does the general government depend? It derives its authority from these governments, and from the same sources from which their authority is derived. The members of the federal government are taken from the same men from

whom those of the state legislatures are taken. If we consider the mode in which the federal representatives will be chosen, we shall be convinced that the general will never destroy the individual governments; and this conviction must be strengthened by an attention to the construction of the Senate. The 5 representatives will be chosen probably under the influence of the members of the state legislatures; but there is not the least probability that the election of the latter will be influenced by the former. One hundred and sixty members represent this commonwealth in one branch of the legislature, are 10 drawn from the people at large, and must ever possess more influence than the few men who will be elected to the general legislature.

Those who wish to become federal representatives must depend on their credit with that class of men who will be the 15 most popular in their counties, who generally represent the people in the state governments; they can, therefore, never succeed in any measure contrary to the wishes of those on whom they depend. It is almost certain, therefore, that the deliberations of the members of the federal House of Representatives 20 will be directed to the interests of the people of America. As to the other branch, the senators will be appointed by the legislatures; and, though elected for six years, I do not conceive they will so soon forget the source from whence they derive their political existence. This election of one branch of the federal 25 by the state legislatures secures an absolute dependence of the former on the latter. The biennial exclusion of one-third will lessen the facility of a combination and may put a stop to intrigues. I appeal to our past experience whether they will attend to the interests of their constituent states. Have not 30 those gentlemen who have been honored with seats in Congress, often signalized themselves by their attachment to their seats?

I wish this government may answer the expectation of its friends, and foil the apprehension of its enemies. I hope the 35

patriotism of the people will continue, and be a sufficient guard to their liberties. I believe its tendency will be, that the state governments will counteract the general interest, and ultimately prevail. The number of the representatives is yet sufficient for our safety and will gradually increase; and, if we consider their different sources of information, the number will not appear too small.

QUESTIONS FOR ANALYSIS

1. *The Speech of Mr. Henry*

Page 121. Do you find a proposition, definitely formulated or implied, in the opening of this speech?

123. What kind of reasoning is employed, beginning, "My great objection to this government"?

123. Has the speaker produced sufficient evidence to establish his position in the opening of this speech?

125. State in concise form and test the argument beginning, "for four of the smallest states," line 12.

125 ff. By what means does the speaker attempt to prejudice the audience against the new Constitution?

128. What kind of reasoning, beginning, "Will the oppressor let go," line 12?

129. State in typical form and test the argument beginning, "I have said that I thought this a consolidated government," line 32.

130, lines 4 ff. Can this argument be justified from the speaker's standpoint?

131, 15. What is unfair and unjust in the position assumed by the speaker?

131 to 132. What kind of reasoning? Test.

133, 5 ff. "This Constitution is said—" Is this really argument? Is it effective?

133, 28 ff. Is this convincing? Why?

135, 29. Is this the proposition the speaker set out to prove?

Find instances in Henry's speech where the speaker has let his prejudice overcome his logic.

2. *The Speech of Mr. Madison*

137. Compare the opening paragraphs of this speech with the opening paragraphs of the former speech. Which is superior? Why?

137, lines 23 ff. "I hope that gentlemen —" Is this fair criticism of Patrick Henry?

138, 3-4. Is this a special issue in Patrick Henry's speech?

138, 5 ff. "Let the dangers —" Is this fair refutation of Patrick Henry?

139, 1-15. Look up the argument here refuted. Is the refutation effective?

139, 1-33. Are these real inconsistencies in Patrick Henry's speech?

139, 16, to 141, 6. Is this refutation effective? Why?

143-144. Is there a special issue here? If so, state clearly. Compare the argument of Patrick Henry on this point. Which is the stronger? Why?

144, 20 ff. What, definitely, is the bearing of the argument in this paragraph?

145, 8-13. State this dilemma in the typical form.

146, 25 ff. Is this method of refutation convincing? Why?

Compare the closing paragraphs of these opposing speeches. Which is the more effective? Why?

Compare the speeches as to manner of expression. How do they differ? What elements are forcible?

What is the bearing of the personalities of the speakers upon the forcefulness of the argument?

II. THE FIRST WEBSTER-HAYNE DEBATE ON MR. FOOTE'S RESOLUTION

THE FIRST WEBSTER-HAYNE DEBATE ON MR. FOOTE'S RESOLUTION

Mr. Foote's resolution — the one under discussion in this debate — was as follows:

“Resolved: That the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also, whether the office of Surveyor-General may not be abolished without detriment to the public interest.”

The two speeches here given were preliminary to the more famous and more familiar orations that were delivered on January 21, 25, and 26.

SPEECH OF SENATOR HAYNE

(Delivered in the Senate, January 19, 1830.)

If the gentlemen who have discussed this proposition had confined themselves strictly to the resolution under consideration, I would have spared the Senate the trouble of listening to the few remarks I now propose to offer.

It has been said, and correctly said, by more than one gentleman, that resolutions of inquiry were usually suffered to pass without opposition. The parliamentary practice in this respect was certainly founded in good sense and sound policy, which regarded such resolutions as intended merely to elicit information, and therefore entitled to favor. But I cannot give my assent to the proposition so broadly laid down by some gentlemen, that, because nobody stands committed by a vote for inquiry, therefore every resolution proposing an inquiry, no matter on what subject, must pass almost as a matter of course, and that to discuss or oppose such resolutions is unparliamentary. The true distinction seems to be this: Where information is desired as the basis of legislation, or where the policy of any measure, or the principles it involves, are really questionable, it is always proper to send the subject to a committee for investigation; but where all the material facts are already known, and there is a fixed and settled opinion in respect to the policy to be pursued, inquiry is unnecessary, and ought to be refused. No one can doubt the correctness of the position assumed by the gentleman from Missouri,¹ that no inquiry ought ever to be instituted as to the expediency of doing a "great and acknowledged wrong." I do not mean, however, to intimate an opinion that such is the character of this resolution. The application of these rules to

¹Senator Thomas H. Benton.

the case before us will decide my vote, and every Senator can apply them for himself to the decision of the question, whether the inquiry now called for should be granted or refused. With that decision, whatever it may be, I shall be content.

I have not risen, however, Mr. President, for the purpose of discussing the propriety of instituting the inquiry recommended by the resolution, but to offer a few remarks on another and much more important question, to which gentlemen have alluded in the course of this debate—I mean the policy which ought to be pursued in relation to the public lands. Every gentleman who has had a seat in Congress for the last two or three years, or even for the last two or three weeks, must be convinced of the great and growing importance of this question. More than half of our time has been taken up with the discussion of propositions connected with the public lands; more than half of our acts embrace provisions growing out of this fruitful source. Day after day the changes are rung on this topic, from the grave inquiry into the right of the new states to the absolute sovereignty and property in the soil, down to the grant of a preëmption of a few quarter sections to actual settlers. In the language of a great orator in relation to another “vexed question,” we may truly say, “that year after year we have been lashed round the miserable circle of occasional arguments and temporary expedients.”

No gentleman can fail to perceive that this is a question no longer to be evaded; it must be met—fairly and fearlessly met. A question that is pressed upon us in so many ways, that intrudes in such a variety of shapes, involving so deeply the feelings and interests of a large portion of the Union, insinuating itself into almost every question of public policy, and tingeing the whole course of our legislation, cannot be put aside, or laid asleep. We cannot long avoid it; we must meet it and overcome it, or it will overcome us. Let us, then, be prepared to encounter it in a spirit of wisdom and of justice, and endeavor to prepare our own minds, and the minds of the

people, for a just and enlightened decision. The object of the remarks I am about to offer is merely to call public attention to the question, to throw out a few crude and undigested thoughts as food for reflection, in order to prepare the public mind for the adoption, at no distant day, of some fixed and settled policy in relation to the public lands. I believe that, out of the Western country, there is no subject in the whole range of our legislation less understood, and in relation to which there exist so many errors and such unhappy prejudices and misconceptions.

There may be said to be two great parties in this country, who entertain very opposite opinions in relation to the character of the policy which the government has heretofore pursued in relation to the public lands, as well as to that which ought hereafter to be pursued. I propose very briefly to examine these opinions, and to throw out for consideration a few ideas in connection with them.

Adverting first to the past policy of the government, we find that one party, embracing a very large portion, perhaps at this time a majority of the people of the United States, in all quarters of the Union, entertain the opinion that, in the settlement of the new states and the disposition of the public lands, Congress has pursued not only a highly just and liberal course, but one of extraordinary kindness and indulgence. We are regarded as having acted towards the new states in the spirit of parental weakness, granting to froward children not only everything that was reasonable and proper, but actually robbing ourselves of our property to gratify their insatiable desires. While the other party, embracing the entire West, insist that we have treated them, from the beginning, not like heirs of the estate, but in the spirit of a hard taskmaster, resolved to promote our selfish interests from the fruit of their labor.

Now, sir, it is not my present purpose to investigate all the grounds on which these opposite opinions rest; I shall content

myself with noticing one or two particulars in relation to which it has long appeared to me that the West has had some cause for complaint. I notice them now, not for the purpose of aggravating the spirit of discontent in relation to this subject, which is known to exist in that quarter, — for I do not know that my voice will ever reach them, — but to assist in bringing others to what I believe to be a just sense of the past policy of the government in relation to this matter.

In the creation and settlement of the new states, the plan has been invariably pursued of selling out, from time to time, certain portions of the public lands for the highest price that could possibly be obtained for them in open market, and, until a few years past, on long credits. In this respect, a marked difference is observable between our policy and that of every other nation that has ever attempted to establish colonies or create new states. Without pausing to examine the course pursued in this respect at earlier periods in the history of the world, I will come directly to the measures adopted in the first settlement of the new world, and will confine my observations entirely to North America. The English, the French, and the Spaniards have successively planted their colonies here, and have all adopted the same policy, which, from the very beginning of the world, had always been found necessary in the settlement of new countries, viz.: A free grant of lands, "without money and without price." We all know that the British colonies, at their first settlement here, whether deriving title directly from the crown or the lords proprietors, received grants for considerations merely nominal.

The payment of a "penny," or a "pepper corn," was the stipulated price which our fathers along the whole Atlantic coast, now composing the thirteen states, paid for their lands, and even when conditions seemingly more substantial were annexed to the grants, such, for instance, as "settlement and cultivation," these were considered as substantially complied with by the cutting down a few trees and erecting a 3

log cabin — the work of only a few days. Even these conditions very soon came to be considered as merely nominal, and were never required to be pursued, in order to vest in the grantee the fee simple of the soil. Such was the system under which this country was originally settled, and under which 5 the thirteen colonies flourished and grew up to that early and vigorous manhood, which enabled them in a few years to achieve their independence; and I beg gentlemen to recollect, and note the fact, that, while they paid substantially nothing to the mother country, the whole profits of their industry were 10 suffered to remain in their own hands.

Now what, let us inquire, was the reason which has induced all nations to adopt this system in the settlement of new countries? Can it be any other than this, that it affords the only certain means of building up in a wilderness great and 15 prosperous communities? Was not that policy founded on the universal belief that the conquest of a new country, the driving out "the savage beasts and still more savage men," cutting down and subduing the forest, and encountering all the hardships and privations necessarily incident to the conversion of 20 the wilderness into cultivated fields, was worth the fee simple of the soil? And was it not believed that the mother country found ample remuneration for the value of the land so granted in the additions to her power and the new sources of commerce and of wealth furnished by prosperous and popular states? 25

Now, sir, I submit to the candid consideration of gentlemen, whether the policy so diametrically opposite to this, which has been invariably pursued by the United States towards the new states in the West, has been quite so just and liberal as we have been accustomed to believe. Certain it is that the 30 British colonies to the north of us, and the Spanish and French to the south and west, have been fostered and reared up under a very different system. Lands which had been for fifty or a hundred years open to every settler without any charge beyond the expense of the survey, were, the moment they fell 35

into the hands of the United States, held up for sale at the highest price that a public auction at the most favorable seasons, and not unfrequently a spirit of the wildest competition, could produce, with a limitation that they should never be sold below a certain minimum price; thus making it, as it would seem, the cardinal point of our policy not to settle the country, and facilitate the formation of new states, but to fill our coffers by coining our lands into gold. 5

Let us now consider for a moment the effect of these two opposite conditions on the condition of a new state. I will take the state of Missouri by way of example. Here is a large and fertile territory coming into the possession of the United States without any inhabitants but Indians and wild beasts — a territory which is to be converted into a sovereign and independent state. You commence your operations by surveying and selling out a portion of the lands, on long credits, to actual settlers; and, as the population progresses, you go on year after year making additional sales on the same terms; and this operation is to be continued, as gentlemen tell us, for fifty or a hundred years at least, if not for all time to come. The inhabitants of this new state, under such a system, it is most obvious, must have commenced their operations under a load of debt, the annual payment of which must necessarily drain their country of the whole profits of their labor just so long as this system shall last. This debt is due, not from some citizens of the state to others of the same state (in which case the money would remain in the country), but it is due from the whole population of the state to the United States, by whom it is regularly drawn out to be expended abroad. Sir, the amount of this debt has, in every one of the new states, actually constantly exceeded the ability of the people to pay, as is proved by the fact that you have been compelled from time to time, in your great liberality, to extend the credits, and in some instances even to remit portions of the debt, in order to protect some land debtors from bankruptcy and total ruin. 35

Now, I will submit the question to any candid man whether, under this system, the people of a new state so situated could, by any industry or exertion, ever become rich and prosperous. What has been the consequence, sir? Almost universal poverty; no money; hardly a sufficient circulating 5 medium for the ordinary exchanges of society; paper banks, relief laws, and the other innumerable evils, social, political, and moral, on which it is unnecessary for me to dwell. Sir, under a system by which a drain like this is constantly operating on the wealth of the whole community, the country may 10 be truly said to be afflicted with a curse which, it has been well observed, is more grievous to be borne "than the barrenness of the soil, and the inclemency of the seasons." It is said, sir, that we learn from our own misfortunes how to feel for the sufferings of others; and perhaps the present condition of the 15 Southern states has served to impress more deeply on my own mind the grievous oppression of a system by which the wealth of a country is drained off to be expended elsewhere. In that devoted region, sir, in which my lot has been cast, it is our misfortune to stand in that relation to the federal 20 government which subjects us to a taxation which it requires the utmost efforts of our industry to meet. Nearly the whole amount of our contributions is expended abroad; we stand toward the United States in the relation of Ireland to England. The fruits of our labor are drawn from us to enrich 25 other and more favored sections of the Union; while, with one of the finest climates and the richest products in the world, furnishing, with one-third of the population, two-thirds of the whole exports of the country, we exhibit the extraordinary, the wonderful, and painful spectacle of a country 30 enriched by the bounty of God, but blasted by the cruel policy of man. The rank grass grows in our streets; our very fields are scathed by the hand of injustice and oppression. Such, sir, though probably in a less degree, must have been the effects of a kindred policy on the fortunes of the 35

West. It is not in the nature of things that it should have been otherwise.

Let gentlemen now pause and consider for a moment what would have been the probable effects of an opposite policy. Suppose, sir, a certain portion of the state of Missouri had been originally laid off and sold to actual settlers for the quit rent of a "pepper-corn" or even for a small price to be paid down in cash. Then, sir, all the money that was made in the country would have remained in the country, and, passing from hand to hand, would, like rich and abundant streams flowing through the land, have adorned and fertilized the whole. Suppose, sir, that all the sales that have been effected had been made by the state, and that the proceeds had gone into the state treasury, to be returned back to the people in some of the various shapes in which a beneficent local government exerts its powers for the improvement of the condition of its citizens. Who can say how much of wealth and prosperity, how much of improvement in science and the arts, how much of individual and social happiness, would have been diffused throughout the land! But I have done with this topic.

In coming to the consideration of the next great question, What ought to be the future policy of the government in relation to the public lands? we find the most opposite and irreconcilable opinions between the two parties which I have before described. On the one side, it is contended that the public land ought to be reserved as a permanent fund for revenue and future distribution among the states, while, on the other, it is insisted that the whole of these lands of right belong to, and ought to be relinquished to, the states in which they lie. I shall proceed to throw out some ideas in relation to the proposed policy that the public lands ought to be reserved for these purposes.

It may be a question, Mr. President, how far it is possible to convert the public lands into a great source of revenue.

Certain it is that all the efforts heretofore made for this purpose have most signally failed. The harshness, if not injustice, of the proceeding puts those upon whom it is to operate upon the alert to contrive methods of evading and counteracting our policy, and hundreds of schemes, in the shape of appropriations of lands for roads, canals, and schools, grants to actual settlers, etc., are resorted to for the purpose of controlling our operations. 5

But, sir, let us take it for granted that we will be able, hereafter, to resist these applications and to reserve the whole of 10 your lands for fifty or for a hundred years, or for all time to come, to furnish a great fund for permanent revenue, is it desirable that we should do so? Will it promote the welfare of the United States to have at our disposal a permanent treasury not drawn from the pockets of the people, but to be 15 derived from a source independent of them? Would it be safe to confide such a treasure to the keeping of our national rulers? to expose them to the temptations inseparable from the direction and control of a fund which might be enlarged or diminished almost at pleasure, without imposing burdens upon the 20 people? Sir, I may be singular. Perhaps I stand alone here in the opinion, but it is one I have long entertained, that one of the greatest safeguards of liberty is a jealous watchfulness on the part of the people over the collection and expenditure of the public money — a watchfulness that can be secured only 25 where the money is drawn by taxation directly from the pockets of the people. Every scheme or contrivance by which rulers are able to procure the command of money by means unknown to, unseen, or unfelt by, the people destroys this security. Even the revenue system of this country, by which 30 the whole of our pecuniary resources are derived from indirect taxation, from duties upon imports, has done much to weaken the responsibility of our federal rulers to the people, and has made them in some measure careless of their rights and regardless of the high trust committed to their care. Can any man 35

believe, sir, that if twenty-three millions per annum was now levied by direct taxation, or by an apportionment of the same among the states, instead of being raised by an indirect tax, of the severe effect of which few are aware, that the waste and extravagance, the unauthorized imposition of duties, and appropriations of money for unconstitutional objects, would have been tolerated for a single year? My life upon it, sir, they would not. I distrust therefore, sir, the policy of creating a great permanent national treasury, whether to be derived from public lands or from any other source. If I had, sir, the powers of a magician, and could, by a wave of my hand, convert this capitol into gold for such a purpose, I would not do it. If I could, by a mere act of my will, put at the disposal of the federal government any amount of treasure which I might think proper to name, I should limit the amount to the means necessary for the legitimate purposes of the government.

Sir, an immense national treasury would be a fund for corruption. It would enable Congress and the Executive to exercise a control over states, as well as over great interests in the country, nay, even over corporations and individuals utterly destructive of the purity, and fatal to the duration of our institutions. It would be equally fatal to the sovereignty and independence of the states. Sir, I am one of those who believe that the very life of our system is the independence of the states, and that there is no evil more to be deprecated than the consolidation of this government. It is only by a strict adherence to the limitations imposed by the Constitution on the federal government that this system works well and can answer the great ends for which it was instituted. I am opposed, therefore, in any shape, to all unnecessary extension of the powers or the influence of the Legislature or Executive of the Union over the states or the people of the states; and, most of all, I am opposed to those partial distributions of favors, whether by legislation or appropriation, which have a

direct and powerful tendency to spread corruption through the land; to create an abject spirit of dependence; to sow the seeds of dissolution; to produce jealousy among the different portions of the Union, and finally to sap the very foundations of the government itself.

5

But, sir, there is another purpose to which it has been supposed the public lands can be applied, still more objectionable. I mean that suggested in a report from the Treasury Department, under the late administration, of so regulating the disposition of the public lands as to create and preserve, in certain quarters of the Union, a population suitable for conducting great manufacturing establishments. It is supposed, sir, by the advocates of the American System, that the great obstacle to the progress of manufactures in this country is the want of that low and degraded population which infest 15 the cities and towns of Europe, who, having no other means of subsistence, will work for the lowest wages, and be satisfied with the smallest possible share of human enjoyment. And this difficulty it is proposed to overcome by so regulating and limiting the sales of the public lands as to prevent the drawing 20 off this portion of the population from the manufacturing states. Sir, it is bad enough that government should presume to regulate the industry of man; it is sufficiently monstrous that they should attempt, by arbitrary legislation, artificially to adjust and balance the various pursuits of society 25 and to "organize the whole labor and capital of the country." But what shall we say of the resort to such means for these purposes! What! create a manufactory of paupers, in order to enable the rich proprietors of woolen and cotton factories to amass wealth? From the bottom of my soul do I abhor and 30 detest the idea that the powers of the federal government should ever be prostituted for such purpose. Sir, I hope we shall act on a more just and liberal system of policy. The people of America are, and ought to be for a century to come, essentially an agricultural people; and I can conceive of no 35

policy that can possibly be pursued in relation to the public lands, none that would be more "for the common benefit of all the states," than to use them as the means of furnishing a secure asylum to that class of our fellow-citizens who in any portion of the country may find themselves unable to procure a comfortable subsistence by the means immediately within their reach. I would, by a just and liberal system, convert into great and flourishing communities that entire class of people who would otherwise be paupers in your streets and outcasts in society, and by so doing you will but fulfill the great trust which has been confided to your care. 5

Sir, there is another scheme in relation to the public lands, which, as it addresses itself to the interested and selfish feelings of our nature, will doubtless find many advocates. I mean the distribution of the public lands among the states, according to some ratio hereafter to be settled. Sir, this system of distribution is, in all its shapes, liable to many and powerful objections. I will not go into them at this time because the subject has recently undergone a thorough discussion in the other House, and because, from present indications, we shall shortly have up the subject here. "Sufficient unto the day is the evil thereof." 15

I come now to the claims set up by the West to these lands. The first is, that they have full and perfect legal and constitutional right to all the lands within their respective limits. This claim was set up for the first time only a few years ago, and has been advocated on this floor, by the gentlemen from Alabama and Indiana, with great zeal and ability. Without having paid much attention to this point, it has appeared to me that this claim is untenable. I shall not stop to enter into the argument further than to say that, by the very terms of the grants under which the United States have acquired these lands, the absolute property in the soil is vested in them, and must, it would seem, continue so until the lands shall be sold or otherwise disposed of. I can easily conceive that it may be 30 35

extremely inconvenient, nay, highly injurious, to a state to have immense bodies of land within her chartered limits locked up from sale and settlement, withdrawn from the power of taxation, and contributing in no respect to her wealth or prosperity. But, though this state of things may present 5 strong claims on the federal government for the adoption of a liberal policy towards the new states, it cannot affect the question of legal or constitutional right. Believing that this claim on the part of the West will never be recognized by the federal government, I must regret that it has been urged, as 10 I think it will have no other effect than to create a prejudice against the claims of the new states.

But, sir, there has been another much more fruitful source of prejudice. I mean the demands constantly made from the West for partial appropriations of the public lands for local 15 objects. I am astonished that gentlemen from the Western country have not perceived the tendency of such a course to rivet upon them forever the system which they consider so fatal to their interests. We have been told, sir, in the course of this debate, of the painful and degrading office which the 20 gentlemen from that quarter are compelled to perform in coming here year after year in the character of petitioners for these petty favors. The gentleman from Missouri [Mr. Benton] tells us, "if they were not goaded on by their necessities they would never consent to be beggars at our doors." Sir, 25 their course in this respect, let me say to those gentlemen, is greatly injurious to the West. While they shall continue to ask and gratefully to receive these petty and partial appropriations, they will be kept forever in a state of dependence. Never will the federal government, or rather those who con- 30 trol its operations, consent to emancipate the West by adopting a wise and just policy looking to any final disposition of the public lands, while the people of the West can be kept in subjection and dependence by occasional donations of these lands; and never will the Western states themselves assume 35

their just and equal station among their sisters of the Union while they are constantly looking up to Congress for favors and gratuities.

What, then, is our true policy on this important subject? I do not profess to have formed any fixed or settled opinions in relation to it. The time has not yet arrived when that question must be decided; and I must reserve for further lights, and more mature reflection, the formation of a final judgment. The public debt must be first paid. For this, these lands have been solemnly pledged to the public creditors. This done, which, if there be no interference with the sinking fund, will be effected in three or four years, the question will then be fairly open to be disposed of as Congress and the country may think just and proper. Without attempting to indicate precisely what our policy ought then to be, I will, in the same spirit which has induced me to throw out the desultory thoughts which I have now presented to the Senate, suggest for consideration whether it will not be sound policy and true wisdom to adopt a system of measures looking to the final relinquishment of these lands, on the part of the United States, to the states in which they lie, on such terms and conditions as may fully indemnify us for the cost of the original purchase, and all the trouble and expense to which we may have been put on their account. Giving up the plan of using these lands forever as a fund either for revenue or for distribution, ceasing to hug them as a great treasure, renouncing the idea of administering them with a view to regulate and control the industry and population of the states, or of keeping in subjection and dependence the states or the people of any portion of the Union, the task will be comparatively easy of striking out a plan for the final adjustment of the land question on just and equitable principles. Perhaps, sir, the lands ought not to be entirely relinquished to any state until she shall have made considerable advances in population and settlement. Ohio has probably already reached that condition. The relinquishment may

be made by a sale to the state, at a fixed price, which I will not say should be nominal; but certainly I should not be disposed to fix the amount so high as to keep the states for any length of time in debt to the United States. In short, our whole policy in relation to the public lands may perhaps be 5 summed up in the declaration with which I set out, that they ought not to be kept and retained forever as a great treasure, but that they should be administered chiefly with a view to the creation, within reasonable periods, of great and flourishing communities, to be formed into free and independent 10 states; to be invested in due season with the control of all the lands within their respective limits.



MR. WEBSTER'S SPEECH IN REPLY TO MR. HAYNE

(In the Senate, January 20, 1830.)

Nothing has been farther from my intention than to take any part in the discussion of this resolution. It proposes only an inquiry on a subject of much importance, and one in regard to which it might strike the mind of the mover and of other gentlemen that inquiry and investigation would be useful. Although I am one of those who do not perceive any particular utility in instituting the inquiry, I have, nevertheless, not seen that harm would be likely to result from adopting the resolution. Indeed, it gives no new powers, and hardly imposes any new duty on the committee. All that the resolution proposes should be done, the committee is quite competent, without the resolution, to do by virtue of its ordinary powers. But, sir, although I have felt quite indifferent about the passing of the resolution, yet opinions were expressed yesterday on the general subject of the public lands, and on some other subjects, by the gentleman from South Carolina, so widely different from my own, that I am not willing to let the occasion pass without some reply. If I deemed the resolution as originally proposed hardly necessary, still less do I think it either necessary or expedient to adopt it, since a second branch has been added to it to-day. By this second branch the committee is to be instructed to inquire whether it be expedient to adopt measures to hasten the sales and extend more rapidly the surveys of the public lands.

Now it appears, Mr. President, that, in forty years, we have sold no more than about twenty millions of acres of public lands. The annual sales do not now exceed, and never have exceeded, one million of acres. A million a year is, according to our experience, as much as the increase of population can bring into settlement. And it appears, also, that we have,

this moment, surveyed and in the market ready for sale, two hundred and ten millions of acres or thereabouts. All this vast mass at this moment lies on our hands for mere want of purchasers. Can any man, looking to the real interests of the country and the people, seriously think of inquiring whether we ought not to hasten the public surveys still faster, and to bring, still more and more rapidly, other vast quantities into the market? The truth is, that, rapidly as population has increased, the surveys have, nevertheless, outrun our wants. There are more lands than purchasers. They are now sold at low prices, and taken up as fast as the increase of people furnishes hands to take them up. It is obvious that no artificial regulation, no forcing of sales, no giving away of the lands even, can produce any great and sudden augmentation of population. The ratio of increase, though great, has its bounds. Hands for labor are multiplied only at a certain rate. The lands cannot be settled but by settlers, nor faster than settlers can be found. A system, if now adopted, of forcing sales, at whatever prices, may have the effect of throwing large quantities into the hands of individuals, who would in this way, in time, become themselves competitors with the government in the sale of land. My own opinion has uniformly been, that the public lands should be offered freely, and at low prices, so as to encourage settlement and cultivation as rapidly as the increasing population of the country is competent to extend settlement and cultivation. Every actual settler should be able to buy good land at a cheap rate; but, on the other hand, speculation by individuals on a large scale should not be encouraged, nor should the value of all lands, sold and unsold, be reduced to nothing, by throwing new and vast quantities into the market at prices merely nominal.

I now proceed, sir, to some of the opinions expressed by the gentleman from South Carolina. Two or three topics were touched by him, in regard to which he expressed sentiments in which I do not at all concur.

In the first place, sir, the honorable gentleman spoke of the whole course and policy of the government towards those who have purchased and settled the public lands, and seemed to think this policy wrong. He held it to have been, from the first, hard and rigorous; he was of the opinion that the United States had acted towards those who had subdued the Western wilderness in the spirit of a stepmother; that the public domain had been improperly regarded as a source of revenue; and that we had rigidly compelled payment for that which ought to have been given away. He said we ought to have imitated the example of other governments which had acted on a much more liberal system than ours in planting colonies. He dwelt particularly upon the settlement of America by colonies from Europe, and reminded us that their governments had not exacted from those colonies payment for the soil. In reference to them, he said, it had been thought that the conquest of the wilderness was itself an equivalent for the soil, and he lamented that we had not followed that example, and pursued the same liberal course towards our own emigrants to the West.

Now, sir, I deny altogether that there has been anything harsh or severe in the policy of the government towards the new states of the West. On the contrary, I maintain that it has uniformly pursued towards those states a liberal and enlightened system, such as its own duty allowed and required, and such as their interest and welfare demanded. The government has been no stepmother to the new states. She has not been careless of their interests nor deaf to their requests; but from the first moment when the territories which now form those states were ceded to the Union, down to the time in which I am now speaking, it has been the invariable object of the government to dispose of the soil according to the true spirit of the obligation under which it received it; to hasten its settlement and cultivation, as far and as fast as practicable; and to rear the new communities into new and independent

states at the earliest moment of their being able, by their numbers, to form a regular government.

I do not admit, sir, that the analogy to which the gentleman refers us is just, or that the cases are at all similar. There is no resemblance between the cases upon which a statesman 5 can found an argument. The original North American colonists either fled from Europe, like our New England ancestors, to avoid persecution, or came hither at their own charges, and often at the ruin of their fortunes, as private adventurers. Generally speaking, they derived neither succor nor protection 10 from their governments at home. Wide, indeed, is the difference between those cases and ours. From the very origin of the government, these Western lands, and the just protection of those who had settled or should settle on them, have been the leading objects in our policy, and have led to expenditures, 15 both of blood and treasure, not inconsiderable; not, indeed, exceeding the importance of the object, and not yielded grudgingly, but yet entitled to be regarded as great, though necessary, sacrifices, made for high, proper ends. The Indian title has been extinguished at the expense of many millions. Is 20 that nothing? These colonists, if we are to call them so, in passing the Alleghenies, did not pass beyond the care and protection of their own government. Wherever they went the public arm was still stretched over them. A parental government at home was still ever mindful of their condition and 25 their wants, and nothing was spared which a just sense of their necessities required. Is it forgotten that it was one of the most arduous duties of the government, in its earliest years, to defend the frontiers against the Northwestern Indians? Are the sufferings and misfortunes under Harmar and St. Clair not 30 worthy to be remembered? Do the occurrences connected with these military efforts show an unfeeling neglect of Western interests? And here, sir, what becomes of the gentleman's analogy? What English armies accompanied our ancestors to clear the forests of a barbarous foe? What treasures of the 35

exchequer were expended in buying up the original title to the soil? What governmental arm held its ægis over our fathers' heads, as they pioneered their way in the wilderness? Sir, it was not until General Wayne's victory, in 1794, that it could be said we had conquered the savages. It was not until that 5 period that the government could have considered itself as having established an entire ability to protect those who should undertake the conquest of the wilderness.

And here, sir, at the epoch of 1794, let us pause and survey the scene as it actually existed thirty-five years ago. Let us 10 look back and behold it. Over all that is now Ohio there then stretched one vast wilderness, unbroken except by two small spots of civilized culture, the one at Marietta and the other at Cincinnati. At these little openings, hardly each a pin's point on the map, the arm of the frontiersman had 15 leveled the forest and let in the sun. These little patches of earth, themselves almost overshadowed by the overhanging boughs of that wilderness which had stood and perpetuated itself from century to century ever since the creation, were all that had been rendered verdant by the hand of man. In an 20 extent of hundreds and thousands of square miles no other surface of smiling green attested the presence of civilization. The hunter's path crossed mighty rivers flowing in solitary grandeur, whose sources lay in remote and unknown regions of the wilderness. It struck upon the north on a vast inland 25 sea, over which the wintry tempests raged as on the ocean; all around was bare creation. It was fresh, untouched, unbounded, magnificent wilderness.

And, sir, what is it now? Is it imagination only, or can it possibly be fact, that presents such a change as surprises and 30 astonishes us when we turn our eyes to what Ohio now is? Is it reality, or a dream, that, in so short a period even as thirty-five years, there has sprung up on the same surface an independent state with a million of people? A million of inhabitants! an amount of population greater than that of all the 35

cantons of Switzerland; equal to one-third of all the people of the United States when they undertook to accomplish their independence. This new member of the Republic has already left far behind her a majority of the old states. She is now by the side of Virginia and Pennsylvania, and in point of numbers will shortly admit no equal but New York herself. If, sir, we may judge of measures by their results, what lessons do these facts read us upon the policy of the government? What inferences do they authorize upon the general question of kindness or unkindness? What convictions do they enforce as to the wisdom and ability, on the one hand, or the folly and incapacity, on the other, of our general administration of Western affairs? Sir, does it not require some portion of self-respect in us to imagine that, if our light had shown on the path of government, if our wisdom could have been consulted in its measures, a more rapid advance to strength and prosperity would have been experienced? For my own part, while I am struck with wonder at the success, I also look with admiration at the wisdom and foresight which originally arranged and prescribed the system for the settlement of the public domain. Its operation has been, without a moment's interruption, to push the settlement of the Western country to the extent of our utmost means.

But, sir, to return to the remarks of the honorable member from South Carolina. He says that Congress has sold these lands and put the money into the treasury, while other governments, acting in a more liberal spirit, gave away their lands, and that we ought also to have given ours away. I shall not stop to state an account between our revenues derived from land and our expenditures in Indian treaties and Indian wars. But I must refer the honorable gentleman to the origin of our own title to the soil of these territories, and remind him that we received them on conditions and under trusts which would have been violated by giving the soil away. For compliance with those conditions, and the just execution of those trusts,

the public faith was solemnly pledged. The public lands of the United States have been derived from four principal sources. First, cessions made to the United States by individual states, on the recommendation or request of the old Congress; secondly, the compact with Georgia, in 1802; thirdly, the purchase of Louisiana, in 1803; fourthly, the purchase of Florida, in 1819. Of the first class, the most important was the cession by Virginia of all her right and title, as well of soil as jurisdiction, to all the territory within the limits of her charter lying northwest of the Ohio River. It may not be ill-timed to recur to the causes and occasions of this and the other similar grants. 5 10

When the War of the Revolution broke out, a great difference existed in different states in the proportion between people and territory. The Northern and Eastern states, with very small surfaces, contained comparatively a thick population, and there was generally within their limits no great quantity of waste lands belonging to the government, or the Crown of England. On the contrary, there were in the Southern states, in Virginia and in Georgia, for example, extensive public domains, wholly unsettled, and belonging to the Crown. As these possessions would necessarily fall from the Crown in the event of a prosperous issue of the war, it was insisted that they ought to devolve on the United States, for the good of the whole. The war, it was argued, was undertaken and carried on at the common expense of all the colonies; its benefits, if successful, ought also to be common; and the property of the common enemy, when vanquished, ought to be regarded as the general acquisition of all. While yet the war was raging, it was contended that Congress ought to have the power to dispose of vacant and unpatented lands, commonly called Crown lands, for defraying the expenses of the war, and for other public and general purposes. "Reason and justice," said the Assembly of New Jersey, in 1778, "must decide that the property which existed in the Crown of Great Britain previous to the present Revolution ought now to belong to the 15 20 25 30 35

Congress, in trust for the use and benefit of the United States. They have fought and bled for it, in proportion to their respective abilities, and therefore the reward ought not to be predilectionally disturbed. Shall such states as are shut out by situation from availing themselves of the least advantage from this quarter be left to sink under an enormous debt, whilst others are enabled in a short period to replace all their expenditures from the hard earnings of the whole confederacy?"

Moved by considerations and appeals of this kind, Congress took up the subject, and in September, 1780, recommended to the several states in the Union having claims to Western territory to make liberal cessions of a portion thereof to the United States; and on the 10th of October, 1780, Congress resolved that any land so ceded, in pursuance of their preceding recommendation, should be disposed of for the common benefit of the United States; should be settled and formed into distinct republican states, to become members of the Federal Union, with the same rights of sovereignty, freedom, and independence as the other states; and that the lands should be granted, or settled, at such times and under such regulations as should be agreed on by Congress. Again, in September, 1783, Congress passed another resolution, setting forth the conditions on which cessions from states should be received; and in October following, Virginia made her cession, reciting the resolution or act of September preceding, and then transferring to the United States her title to her Northwestern territory, upon the express condition that the lands so ceded should be considered as a common fund for the use and benefit of such of the United States as had become or should become members of the confederation, Virginia inclusive, and should be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatever. The grants from other states were on similar conditions. Massachusetts and Connecticut both had claims to Western lands, and both relinquished them to the United States in the same manner. These grants were

all made on three substantial conditions or trusts. First, that the ceded territories should be formed into states, and admitted in due time into the Union with all the rights belonging to other states; secondly, that the lands should form a common fund, to be disposed of for the general benefit of all the states; and thirdly, that they should be sold and settled at such time and in such manner as Congress should direct. 5

Now, sir, it is plain that Congress never has been, and is not now, at liberty to disregard these solemn conditions. For the fulfilment of all these trusts, the public faith was, and is, 10 fully pledged. How, then, would it have been possible for Congress, if it had been so disposed, to give away these public lands? How could it have followed the example of other governments, if there had been such, and considered the conquest of the wilderness an equivalent compensation for the 15 soil? The states had looked to this territory, perhaps too sanguinely, as a fund out of which means were to come to defray the expenses of the war. It had been received as a fund; as a fund Congress had bound itself to apply it. To have given it away would have defeated all the objects which 20 Congress, and particularly the states, had had in view in asking and obtaining the cession, and would have plainly violated the conditions which the ceding states attached to their own grants.

The gentleman admits that the lands cannot be given away 25 until the national debt is paid, because to a part of that debt they stand pledged. But this is not the original pledge. There is, so to speak, an earlier mortgage. Before the debt was funded, at the moment of the cession of the lands, and by the very terms of that cession, every state in the Union obtained 30 an interest in them as in a common fund. Congress has uniformly adhered to this condition. It has proceeded to sell the lands, and to realize as much from them as was compatible with the other trusts created by the same deeds of cession. One of these deeds of trust, as I have already said, was, that 35

the lands should be sold and settled at such time and in such manner as Congress shall direct. The government has always felt itself bound, in this respect, to exercise its own best judgment, and not to transfer the discretion to others. It has not felt itself at liberty to dispose of the soil, therefore, in large masses to individuals, thus leaving to them the time and manner of settlement. It had stipulated to use its own judgment. If, for instance, in order to rid itself of the trouble of forming a system for the sale of those lands, and, going into detail, it had sold the whole of what is now Ohio in one mass to individuals or companies, it would clearly have departed from its just obligations. And who can tell or conjecture how great would have been the evil of such a course? Who can say what mischiefs would have ensued if Congress had thrown these territories into the hands of private speculation? Or who, on the other hand, can now foresee what the event would be should the government depart from the same wise course hereafter, and, not content with such gradual absorption of the public lands as the natural growth of our population may accomplish, should force great portions of them, at nominal or very low prices, into private hands, to be sold and settled as and when such holders might think would be most for their own interests?

Hitherto, sir, I maintain, Congress has acted wisely, and done its duty on this subject. I hope it will continue to do it. Departing from the original idea, so soon as it was found practicable and convenient, of selling by townships, Congress has disposed of the soil in smaller and still smaller portions, till at length it sells in parcels of no more than eighty acres; thus putting it into the power of every man in the country, however poor, but who has health and strength, to become a freeholder if he desires, not of barren acres, but of rich and fertile soil. The government has performed all the conditions of the grant. While it has regarded the public lands as a common fund, and has sought to make what reasonably could be made of

them as a source of revenue, it has also applied its best wisdom to sell and settle them as fast and as happily as possible; and whensoever numbers would warrant it, each territory has been successively admitted into the Union with all the rights of an independent state.

Is there then, sir, I ask, any ground for a well-founded charge of hard dealing? for any just accusation of negligence, indifference, or parsimony, which is capable of being sustained against the government of the country in its conduct towards the new states? I think there is not.

But there was another observation of the honorable member, which, I confess, did not a little surprise me. As a reason for wishing to get rid of the public lands as soon as we could, and as we might, the honorable gentleman said he wanted no permanent sources of income. He wished to see the time when the government should not possess a shilling of permanent revenue. If he could speak a magical word, and by that word convert the Capitol into gold, the word should not be spoken. The administration of a fixed revenue, he said, only consolidates the government and corrupts the people! Sir, I confess I heard these sentiments uttered on this floor not without deep regret and pain.

I am aware that these and similar opinions are espoused by certain persons out of the Capitol and out of this government; but I did not expect so soon to find them here. Consolidation! — that perpetual cry both of terror and delusion, — consolidation! Sir, when gentlemen speak of the effects of a common fund belonging to all the states as having a tendency to consolidation, what do they mean? Do they mean, or can they mean, anything more than that the union of the states will be strengthened by whatever continues or furnishes inducements to the people of the states to hold together? If they mean merely this, then no doubt the public lands, as well as everything else in which we have a common interest, tend to consolidation; and to this species of consolidation every true

American ought to be attached; it is neither more nor less than strengthening the Union itself. This is the sense in which the framers of the Constitution use the word consolidation, and in this sense I adopt and cherish it. They tell us, in the letter submitting the Constitution to the consideration of the country, that, "In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected."

This, sir, is General Washington's consolidation. This is the true constitutional consolidation. I wish to see no new powers drawn to the general government; but I confess I rejoice in whatever tends to strengthen the bond that unites us and encourages the hope that our Union may be perpetual. And therefore I cannot but feel regret at the expression of such opinions as the gentleman has avowed, because I think their obvious tendency is to weaken the bond of our connection. I know that there are some persons in the part of the country from which the honorable member comes who habitually speak of the Union in terms of indifference, or even of disparagement. The honorable member himself is not, I trust, and can never be, one of these. They significantly declare that it is time to calculate the value of the Union; and their aim seems to be to enumerate and to magnify all the evils, real and imaginary, which the government under the Union produces.

The tendency of these ideas and sentiments is obviously to bring the Union into discussion as a mere question of present and temporary expediency; nothing more than a mere matter of profit and loss. The Union is to be preserved while it suits local and temporary purposes to preserve it, and to be sun-

dered whenever it shall be found to thwart such purposes. Union, of itself, is considered by the disciples of this school as hardly a good. It is only regarded as a possible means of good; or, on the other hand, as a possible means of evil. They cherish no deep and fixed regard for it, flowing from a thorough conviction of its absolute and vital necessity to our welfare. Sir, I deprecate and deplore this tone of thinking and acting. I deem far otherwise of the Union of the states; and so did the framers of the Constitution themselves. What they said I believe, fully and sincerely believe, that the Union of the 10 states is essential to the prosperity and safety of the states. I am a unionist, and, in this sense, a national republican. I would strengthen the ties that hold us together. Far, indeed, in my wishes, very far distant be the day, when our associated and fraternal stripes shall be severed asunder, and when that 15 happy constellation under which we have risen to so much renown shall be broken up, and sink, star after star, into obscurity and night!

Among other things, the honorable member spoke of the public debt. To that he holds the public lands pledged, and 20 has expressed his usual earnestness for its total discharge. Sir, I have always voted for every measure for reducing the debt, since I have been in Congress. I wished it paid because it is a debt, and, so far, is a charge upon the industry of the country and the finances of the government. But, sir, I have 25 observed that, whenever the subject of the public debt is introduced into the Senate, a morbid sort of fervor is manifested in regard to it, which I have been sometimes at a loss to understand. The debt is not now large, and is in a course of most rapid reduction. A few years will see it extinguished. I 30 am not entirely able to persuade myself that it is not certain supposed incidental tendencies and effects of this debt, rather than its pressure and charge as a debt, that cause so much anxiety to get rid of it. Possibly it may be regarded as in some degree a tie, holding the different parts of the country 35

together, by consideration of mutual interest. If this be one of its effects, the effect itself is, in my opinion, not to be lamented. Let me not be misunderstood. I would not continue the debt for the sake of any collateral or consequential advantage such as I have mentioned. I only mean to say that that consequence itself is not one that I regret; at the same time, that, if there are others who would or who do regret it, I differ from them.

As I have already remarked, sir, it was among the reasons assigned by the honorable member for his wish to be rid of the public lands altogether, that the public disposition of them, and the revenues derived from them, tend to corrupt the people. This, sir, I confess, passes my comprehension. These lands are sold at public auction, or taken up at fixed prices, to form farms and freeholds. Whom does this corrupt? Is the schoolmaster a corrupter of youth? The spelling book, does it break down the morals of a rising generation? and the Holy Scriptures, are they fountains of corruption? Or if, in the exercise of provident liberality in regard to its own property as a great landed proprietor and to high purposes of utility towards others, the Government gives portions of these lands to the making of a canal, or the opening of a road, in the country where the lands themselves are situated, what alarming and overwhelming corruption follows from this? Can there be nothing pure in government except the exercise of mere control? Can nothing be done without corruption but the impositions of penalty and restraint? Whatever is positively beneficent, whatever is actively good, whatever spreads abroad benefits and blessings which all can see and all can feel, whatever opens channels of intercourse, augments population, enhances the value of property, and diffuses knowledge, — must all this be rejected and reprobated as a dangerous and obnoxious policy, hurrying us to the double ruin of a government turned into despotism by the mere acts of beneficence, and of a people corrupted beyond hope of rescue by the improvement of their condition?

The gentleman proceeded, sir, to draw a frightful picture of the future. He spoke of the centuries that must elapse before all the lands could be sold, and the great hardships that the states must suffer while the United States reserve to themselves, within their limits, such large portions of soil not liable 5 to taxation. Sir, this is all, or mostly, imagination. If these lands were leasehold property, if they were held by the United States on rent, there would be much in the idea. But they are wild lands, held only till they can be sold; reserved no longer than till somebody will take them up at low prices. As to 10 their not being taxed, I would ask whether the states themselves, if they owned them, would tax them before sale? Sir, if in any case any state can show that the policy of the United States retards her settlement, or prevents her from cultivating the lands within her limits, she shall have my vote to alter that 15 policy. But I look upon the public lands as a public fund, and that we are no more authorized to give them away gratuitously than to give away gratuitously the money in the treasury. I am quite aware that the sums drawn annually from the Western states make a heavy drain upon them; but 20 that is unavoidable. For that very reason among others I have always been inclined to pursue towards them a kind and most liberal policy; but I am not at liberty to forget, at the same time, what is due to other states, and to the solemn engagements under which the government rests. 25

I come now, Mr. President, to that part of the gentleman's speech which has been the main occasion of my addressing the Senate. The East! the obnoxious, the rebuked, the always reproached East!—we have come in, sir, on this debate, for even more than a common share of accusation and attack. 30 If the honorable member from South Carolina was not our original accuser, he has yet recited the indictment against us with the air and tone of a public prosecutor. He has summoned us to plead on our arraignment; and he tells us we are charged with the crime of a narrow and selfish policy; of en- 35

deavoring to restrain emigration to the West, and, having that object in view, of maintaining a steady opposition to Western measures and Western interests. And the cause of all this narrow and selfish policy, the gentleman finds in the tariff; I think he called it the accursed policy of the tariff. This policy, the gentleman tells us, requires multitudes of dependent laborers, a population of paupers, and that it is to secure these at home that the East opposes whatever may induce to Western emigration. Sir, I rise to defend the East. I rise to repel both the charge itself and the cause assigned for it. I deny that the East has at any time shown an illiberal policy towards the West. I pronounce the whole accusation to be without the least foundation in any facts, existing either now or at any previous time. I deny it in the general and I deny each and all its particulars. I deny the sum total, and I deny the detail. I deny that the East has ever manifested hostility to the West, and I deny that she has adopted any policy that would naturally have led her in such a course.

But the tariff! the tariff! Sir, I beg to say in regard to the East, that the original policy of the tariff is not hers, whether it be wise or unwise. New England is not its author. If the gentlemen will refer to the tariff of 1816, they will find that this was not carried by New England votes. It was truly more a Southern than an Eastern measure. And what votes carried the tariff of 1824? Certainly not those of New England. It is known to have been made matter of reproach, especially against Massachusetts, that she would not aid the tariff of 1824; and a selfish motive was imputed to her for that also. In point of fact, it is true that she did, indeed, oppose the tariff of 1824. There were more votes in favor of that law in the House of Representatives, not only in each of a majority of the Western states, but even in Virginia herself, than in Massachusetts. It was literally forced upon New England; and this shows how groundless, how void of all probability, must be any charge of hostility to the growth of the Western

states, as naturally flowing from a cherished policy of her own.

But leaving all conjectures about causes and motives, I go at once to the fact, and I meet it with one broad, comprehensive and emphatic negative. I deny that, in any part of her history, at any period of the government, or in relation to any leading subject, New England has manifested such hostility as is charged upon her. On the contrary, I maintain that, from the day of the cession of the territories by the states to Congress, no portion of the country has acted either with more liberality or more intelligence, on the subject of the public lands in the new states, than New England.

This statement, though strong, is no stronger than the strictest truths will warrant. Let us look at the historical facts. So soon as the cessions were obtained, it became necessary to make provision for the government and disposition of the territory. The country was to be governed. This, for the present, it was obvious, must be by some territorial system of administration. But the soil, also, was to be granted and settled. Those immense regions, large enough almost for an empire, were to be appropriated to private ownership. How was this best to be done? What system for sale and disposition should be adopted? Two modes for conducting the sales presented themselves; the one a Southern, and the other a Northern mode. It would be tedious, sir, here, to run out these different systems into all their distinctions, and to contrast the opposite results. That which was adopted was the Northern system, and is that which we now see in successful operation in all the new states. That which was rejected was the system of warrants, surveys, entry, and location; such as prevails south of the Ohio. It is not necessary to extend these remarks into invidious comparisons. The last system is that which, as has been expressively said, has shingled over the country to which it was applied with so many conflicting titles and claims. Everybody acquainted with the subject knows how easily it leads to

speculation and litigation, two great calamities in a new country. From the system actually established, these evils are banished. Now, sir, in effecting this great measure, the first important measure on the whole subject, New England acted with vigor and effect, and the latest posterity of those who settled the region northwest of the Ohio will have reason to remember with gratitude her patriotism and her wisdom. The system adopted was her own system. She knew, for she had tried and proved its value. It was the old-fashioned way of surveying lands before the issuing of any title papers, and then of inserting accurate and precise descriptions in the patents or grants, and proceeding with regular reference to metes and bounds. This gives to original titles derived from government a certain and fixed character; it cuts up litigation by the roots, and the settler commences his labor with the assurance that he has a clear title. It is easy to perceive, but not easy to measure, the importance of this in a new country. New England gave this system to the West; and while it remains there will be spread over all the West one monument of her intelligence in matters of government and her practical good sense.

At the foundation of the constitution of these new Northwestern states lies the celebrated Ordinance of 1787. We are accustomed, sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. That instrument was drawn by Nathan Dane, then and now a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men to be the authors of a political measure of more large and enduring consequence. It fixed forever the character of the population in the vast regions northwest of the Ohio by excluding from them involuntary servitude. It impressed on the soil

itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. It laid the interdict against personal servitude, in original compact, not only deeper than all law, but deeper also than all local constitutions. Under the circumstances then existing, I look upon this original and season- 5
able provision as a real good attained. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow. It was a great and salutary measure of prevention. Sir, I should fear the rebuke of no intelligent gentleman of Kentucky were I to ask whether, if such an 10
ordinance could have been applied to his own state while it yet was a wilderness and before Boone had passed the gap of the Alleghenies, he does not suppose it would have contributed to the ultimate greatness of that commonwealth? It is, at any rate, not to be doubted, that, where it did apply, it has pro- 15
duced an effect not easily to be described or measured, in the growth of the states, and the extent and increase of their population. Now, sir, as I have stated, this great measure was brought forward, in 1787, by the North. It was sustained, indeed, by the votes of the South, but it must have failed with- 20
out the cordial support of the New England states. If New England had been governed by the narrow and selfish views now ascribed to her, this very measure was, of all others, the best calculated to thwart her purposes. It was, of all things, the very means of rendering certain a vast emigration from her 25
own population to the West. She looked to that consequence only to disregard it. She deemed the regulation a most useful one to the states that would spring up on the territory, and advantageous to the country at large. She adhered to the principle of it perseveringly, year after year, until it was finally 30
accomplished.

Leaving, then, Mr. President, these two great and leading measures, and coming down to our own times, what is there in the history of recent measures of government that exposes New England to this accusation of hostility to Western inter- 35

ests? I assert boldly, that, in all measures conducive to the welfare of the West since my acquaintance here, no part of the country has manifested a more liberal policy. I beg to say, sir, that I do not state this with a view of claiming for her any special regard on that account. Nor at all. She does not place her support of measures on the ground of favor conferred. Far otherwise. What she has done has been consonant to her view of the general good, and therefore she has done it. She has sought to make no gain of it; on the contrary, individuals may have felt, undoubtedly, some natural regret at finding the relative importance of their own states diminished by the growth of the West. But New England has regarded that as the natural course of things, and has never complained of it. Let me see, sir, any one measure favorable to the West, which has been opposed by New England, since the government bestowed its attention on these Western improvements. Select what you will, if it be a measure of acknowledged utility, I answer for it, it will be found that not only were New England votes for it, but that New England votes carried it. Will you take the Cumberland Road? Who has made that? Will you take the Portland Canal? Whose support carried that bill? Sir, at what period beyond the Greek calends could these measures, or measures like these, have been accomplished, had they depended on the votes of Southern gentlemen? Why, sir, we know that we must have waited till the constitutional notions of those gentlemen had undergone an entire change. Generally speaking, they have done nothing, and can do nothing. All that has been effected has been done by the votes of reproached New England. I undertake to say, sir, that if you look to the votes on any one of these measures, and strike out from the list of ayes the names of New England members, it will be found that in every case the South would then have voted down the West, and the measure would have failed. I do not believe any one instance can be found where this is not strictly true. I do not believe that one dollar has been

expended for these purposes beyond the mountains which could have been obtained without cordial co-operation and support from New England.

Sir, I put the question to the West itself. Let gentlemen who have sat here ten years come forth and declare by what 5 aids and by whose votes they have succeeded, in measures deemed of essential importance to their part of the country. To all men of sense and candor, in or out of Congress, who have any knowledge upon the subject, New England may appeal for refutation of the reproach it is now attempted to 10 cast upon her in this respect.

I take the liberty to repeat that I make no claim on behalf of New England, or on account of that which I have now stated. She does not profess to have acted out of favor; for it would not become her so to have acted. She asks for no 15 especial thanks; but, in the consciousness of having done her duty in these things uprightly and honestly, and with a fair and liberal spirit, be assured she will repel, whenever she thinks the occasion calls for it, an unjust and groundless imputation of partiality and selfishness. 20

The gentleman alluded to a report of the late Secretary of the Treasury, which, according to his reading or construction of it, recommended what he calls the tariff policy, or a branch of that policy; that is, the restraining of emigration to the West, for the purpose of keeping hands at home to carry on manu- 25 factures. I think, sir, that the gentleman misapprehended the meaning of the Secretary, in the interpretation given to his remarks. I understand him only as saying, that, since the low price of lands at the West acts as a constant and standing bounty to agriculture, it is, on that account, the more reason- 30 able to provide encouragement for manufactures. But, sir, even if the Secretary's observation were to be understood as the gentleman understands it, it would not be a sentiment borrowed from any New England source. Whether it be right or wrong, it does not originate in that quarter. 35

In the course of these remarks, Mr. President, I have spoken of the supposed desire, on the part of the Atlantic states, to check, or at least not to hasten, Western emigration, as a narrow policy. Perhaps I ought to have qualified the expression, because, sir, I am now about to quote the opinion of one to whom I would impute nothing narrow. I am about to refer you to the language of a gentleman of much and deserved distinction, a member of the other house, and occupying a prominent situation there. The gentleman, sir, is from South Carolina. In 1825, a debate arose in the House of Representatives on the subject of the Western Road. It happened to me to take some part in the debate; I was answered by the honorable gentleman to whom I allude, and I replied. May I be pardoned, sir, if I read a part of this debate?

"The gentleman from Massachusetts has urged," said Mr. McDuffie, "as one leading reason why the government should make roads to the West, that these roads have a tendency to settle the public lands; that they increase the inducements to settlement, and that this is a national object. Sir, I differ entirely from his views on that subject. I think that the public lands are settling quite fast enough; that our people need no stimulus to urge them thither, but want rather a check, at least on that artificial tendency to Western settlement which we have created by our own laws.

"The gentleman says that the great object to government with respect to those lands is, not to make them a source of revenue, but to get them settled. What would have been thought of this argument in the old thirteen states? It amounts to this, that those states are to offer a bonus of their own impoverishment to create a vortex to swallow up our floating population. Look, sir, at the present aspect of the Southern states. In no part of Europe will you see the same indications of decay. Deserted villages, houses falling to ruin, impoverished lands thrown out of cultivation. Sir, I believe that if the public lands had never been sold the aggregate amount of the national wealth would have been greater at this moment. Our population, if concentrated in the old states, and not ground down by tariffs, would have been more prosperous and wealthy. But every inducement has been held out to them to settle in the West, until our population has become sparse, and then the effects of this sparseness are now to be counteracted by another artificial system. Sir, I say if there

is any object worthy the attention of this government, it is a plan which shall limit the sale of the public lands. If those lands were sold according to their real value, be it so. But while the government continues as it does to give them away, they will draw the population of the other states, and still further increase the effect which is already distressingly felt, and which must go to diminish the value of all those the states possess. And this, sir, is held out to us as a motive for granting the present appropriation. I would not, indeed, prevent the formation of roads on these considerations, but I certainly would not encourage it. Sir, there is an additional item in the account of the benefits which this government has conferred on the Western States. It is the sale of the public lands at the minimum price. At this moment we are selling to the people of the West, lands, at one dollar and twenty-five cents, which are worth fifteen dollars, and which would sell at that price if the markets were not glutted."

Mr. Webster observed, in reply, that the gentleman from South Carolina¹ had mistaken him, if he¹ supposed that it was his² wish so to hasten the sales of the public lands, as to throw them into the hands of purchasers who would sell again. His² idea only went as far as this: that the price should be fixed so low as not to prevent the settlement of the lands, yet not so low as to allow speculators to purchase. Mr. Webster observed that he could not at all concur with the gentleman from South Carolina in wishing to restrain the laboring classes of population in the Eastern states from going to any part of our territory where they could better their condition; nor did he³ suppose that such an idea was anywhere entertained. The observations of the gentleman¹ had opened to him³ new views of policy on this subject, and he³ thought he³ now could perceive why some of our states continued to have such bad roads; it must be for the purpose of preventing people from going out of them.

"The gentleman from South Carolina supposes," said Webster, "that, if our population had been confined to the old thirteen states, the aggregate wealth of the country would have been greater than it now is. But, sir, it is an error that the increase of the aggregate of the national wealth is the object chiefly to be pursued by government. The distribution of the national wealth is an object quite as important as its increase. I am not surprised that the old states not increasing in population so fast as was expected (for I believe nothing like a decrease is pretended) should be an idea by no means agreeable to gentlemen from those states. We are all reluctant to submit to the loss of relative importance; but this is nothing more than the natural condition of a country densely peopled in one part and possessing in another a vast tract of unsettled lands. The plan of the gentleman goes to reverse the order of nature, vainly expecting to retain

¹ McDuffie.

² Webster's.

³ Webster.

men within a small and comparatively unproductive territory, 'who have all the world before them where to choose.' For my part, I am in favor of letting population take its own course; I shall experience no feeling of mortification if any of my constituents like better to settle on the Kansas or Arkansas, or elsewhere within our territory; let them go and be happier if they can.

"The gentleman says our aggregate of wealth would have been greater if our population had been restrained within the limits of the old states; but does he not consider population to be wealth? And has not this been increased by the settlement of a new and fertile country? Such a country presents the most alluring of all prospects to a young and laboring man; it gives him a freehold, it offers to him weight and respectability in society; and, above all, it presents to him a prospect of a permanent provision for his children. Sir, these are inducements which never were resisted, and never will be; and, were the whole extent of the country filled with population up to the Rocky Mountains, these inducements would carry that population forward to the shores of the Pacific Ocean. Sir, it is vain to talk; individuals will seek their own good, and not any artificial aggregate of the national wealth. A young enterprising and hardy agriculturist can conceive of nothing better to him than plenty of good, cheap land."

Sir, with the reading of these extracts I leave the subject. The Senate will bear me witness that I am not accustomed to allude to local opinions, nor to compare or contrast different portions of the country. I have often suffered things to pass without any observation, which I might properly enough have considered as deserving remark. But I have felt it my duty, on this occasion, to vindicate the state I represent from charges and imputations on her public character and conduct which I know to be undeserved and unfounded. If advanced elsewhere, they might be passed, perhaps, without notice. But whatever is said here is supposed to be entitled to public regard, and to deserve public attention; it derives importance and dignity from the place where it is uttered. As a true representative of the state which has sent me here, it is my duty, and a duty which I shall fulfill, to place her history and her conduct, her honor and her character, in their just and proper light, so often as I think an attack is made upon her, so respectable as to deserve to be repelled.

QUESTIONS FOR ANALYSIS

1. *The Speech of Mr. Hayne*

153. Are the first two paragraphs argument? What purpose do they serve?

154 ff. By what means does the speaker analyze his question? Trace the analysis step by step.

158, line 9 ff. "Let us now consider for a moment—" What kind of reasoning?

159, 13 ff. "It is said, sir,—" What kind of argument? What kind of evidence is this? Is it convincing?

160, 20. "I have done with this topic." What are the constructive and destructive elements up to this point?

162, 18 ff. "Sir, an immense national treasury—" Compare Hayne's attitude toward the federal government with that of Patrick Henry, **121 ff.**

163, 6 ff. "But, sir, there is another purpose—" Is this a sound argument?

164, 12 ff. "Sir, there is another scheme—" What purpose does this paragraph serve?

165-167. Is there a special issue here?

Is the ending of the argument effective? Analyze.

How does the discussion of a resolution differ from a formal debate?

2. *The Speech of Mr. Webster*

169-170. Does Webster state his proposition in the first two paragraphs? Is there argument in these paragraphs?

171, 1 ff. "In the first place, sir,—" What service is performed by this paragraph? Is it argument?

171, 21 ff. "Now, sir, I deny altogether—" Has Webster refuted Hayne's argument in this paragraph? What method has he used?

172, 3 ff. "I do not admit, sir,—" Does this refute Hayne's argument?

173-174. "And here, sir, at the epoch of 1794—" Is this historical sketch relevant to the issue? Why? What argumentative use does Webster make of it?

180, 31 ff. "The tendency of these ideas—" Is there argument in this paragraph?

182, 8 ff. "As I have already remarked—" What kind of argument here? Test its soundness.

183, 26 ff. "I come now, Mr. President,—” Is there evidence here? Is there proof? Is there effective refutation?

186, 22 ff. "At the foundation of the Constitution—" What bearing does this paragraph have upon the issue?

187, 32. "These two great and leading measures—" What are they? What kind of arguments in this and the following paragraphs?

192. Has Webster met all of his opponent's arguments? Has he refuted them?

Does the final paragraph state fully the conclusion from his course of argument?

Has this speech unity? coherence? proportion? climax?

III. THE CALHOUN-CASS DEBATE

THE CALHOUN-CASS DEBATE

On the 6th of January, 1848, a bill was introduced into the United States Senate "to raise for a limited time an additional military force." The force to be raised was to consist of "10 regiments of infantry, the legal establishment of each being 1000 men. A volunteer force of 12,500 to supply vacancies." A heated debate arose at this time, and the voting was postponed. Twice more the bill came up before the Senators, only to arouse violent discussion. At last, on March 16, 1848, Calhoun and Cass met in the following debate to settle the question forever.

Now, the difficulty with the question was, that it involved the entire subject of the Mexican War. To raise a force of 22,500 men is not such a stupendous task as to set the United States Senate at loggerheads. But no sooner was the bill up for discussion than all took sides on the far greater issue of the policy and the justification of the war. The whole Mexican War problem lies behind the debate given below. Calhoun had already taken a stand on the question in December of the preceding year. He was against the policy of prosecuting the war, he had said, for the following reasons: It might have been avoided; the President had transcended his authority in declaring it; the allegations made against the Mexicans were untrue; the policy would lead to many evils, and finally, perhaps, to the destruction of our democratic institutions. He assumes these propositions in the speech quoted. Cass, on the other hand, defended the bill because he believed it in accord with popular desire, and because it would serve to keep his name before the people, thereby helping his candidacy for the Presidency.

SPEECH OF MR. CALHOUN ON THE TEN REGIMENT BILL

(Delivered in the Senate, March 16, 1848.)

After a very careful examination, I have not been able to find a single argument which, in my opinion, would justify the passage of this bill at this time and under existing circumstances. I cannot but feel that those who have come to a different conclusion have overlooked the actual condition of the Mexican government, and of the people of Mexico, in supposing that this bill was necessary either to intimidate or to coerce that government into a ratification of the treaty recently acted upon here. 5

If that government were strong and vigorous,— if the people 10 of Mexico were united in resistance to us, and capable of sustaining a war in the event that the treaty shall not be ratified,— there might be strong reasons for passing the bill. But such is not the case. On the contrary, the very opposite is. The government itself is little more than a shadow, without an 15 army and without revenue; the people in a state of distraction, with a large and powerful party in opposition to the government and for a continuance of the war, not in hostility to us, but in hostility to their own government, which they desire should be overthrown. The government itself exists by our forbearance, 20 and under our countenance; they have been induced to treat with us from the dread of their annihilation, and we to treat with them from the same consideration. For, strange as it may appear, the very motive that induced Mexico to treat with us induced us to treat with her. She dreaded her annihilation, 25 and so did we. It is difficult to say which would be subjected to the greatest evil in consequence of her annihilation. The danger is, not that the Mexican government, in the event of the rejection of the treaty, would be able to resist, but it is that it may perish before she can ratify it. But if I am mistaken in 30

all this, one thing is clear: without these ten additional regiments we have the means of intimidating or coercing that government to any extent we please. A single brigade can annihilate it. But even if we should choose to avoid this, we hold another power in our hands that is ample to induce her to ratify the treaty, provided there be any hesitation on her part. We would, in that case, have but to tell her that we will adopt the boundary agreed upon in the treaty, and thus save ourselves the vast sum of twenty millions of dollars, which rumor states we are to give for the ceded territory. To obtain this sum was her inducement to agree to the treaty, and the fear of losing it would be sufficient to induce her to ratify it, provided the Mexican government can maintain itself until it has acted upon the treaty, including the amendments made by this body.

In this view of the subject I regard the passage of this bill, if it be intended either for the purpose of intimidation or coercion, to be entirely useless — an unmeaning bravado. But it is worse than useless; it is mischievous, and will prove to be mischievous here and there. Mischievous here, for if this body, conversant with all the secret proceedings in reference to the treaty, and supposed by the country to be fully informed of everything in relation to the subject, should pass the bill now before us, it will be received by the public as an apprehension on our part that there is great danger that the treaty will not be ratified, and the effect upon our commerce and upon the money interest of the country will be highly injurious. It will be mischievous there, for the real danger that the Mexican government has to fear is this: there is a large party in Mexico called Puros, which is unwilling to see a peace concluded between the Mexican government and this country; unwilling, not because they are our friends or enemies, but simply for the reason that they wish to see that government annihilated, and the power placed in their hands. Now if the impression produced there by the passage of this bill should be that there is danger that the treaty will not be ratified, it will arouse and

animate that party to double exertion, in order to fulfill their object.

But I consider it not only useless, not only mischievous in the light which I have indicated, but it will be a costly bravado. I take it for granted that the honorable chairman of the Committee on Military Affairs does not intend simply that this bill shall pass this body — that would be unworthy of his character. He then expects that it will also pass the other branch of Congress, and become a law, and that the force will be raised and employed, if the treaty should fail, in carrying on the war with Mexico. Well, if the bill passes,—and I must consider it in that light,—in that case, what will be the result? There will be no difficulty in getting officers and men. Officers will greedily seek the honors and the emoluments attached to command, and the men will readily enlist, for they will have no apprehension of going to Mexico or fighting future battles. The enlistment will turn out to be a profitable speculation. Each recruit will receive, on enlistment, a bounty in land of 160 acres, and in money of twelve dollars. He will also receive the issue of clothing usual on such occasions, equal, at the present time, to about twenty-one dollars; estimating the bounty in land at one dollar and twenty-five cents an acre, that item alone would make \$2,000,000. Add the other two items, and the whole would not be less than two million three or four hundred thousand dollars. Add to this the pay and emoluments of the officers, the pay to the soldiers, the expense for their subsistence, and the expense of their recruiting, and it will be found that the passage of this bill will subject the government to the sum of \$3,000,000, even if the treaty should be ratified and not a man ever go to Mexico — no small sum for an unmeaning bravado. But the mischief will not end here; the appointment of five hundred officers and this great expenditure would confer vast patronage on the President, and that, too, on the eve of a Presidential election, when it is always brought into the highest degree of activity. I will not attempt to show that 35

it would be a great evil to increase the patronage of the Executive. It is already enormously great, as every man of every party must acknowledge, if he would candidly express his sentiments. Now I submit to my friends on this side of the chamber, who would be responsible for the passage of this bill, are you prepared to add this great additional sum to the already heavy debt incurred in the prosecution of this war, and this great increase of patronage to that which the war has already added, for an idle bravado, unbecoming a great and magnanimous government, as I have already clearly shown ?

But I not only object to the passage of this bill at this time and under existing circumstances, but I take higher ground; I am opposed to the bill at all times and under all circumstances. I would have voted against it if the treaty had not been made, for reasons conclusive to my mind, as I shall next proceed to state.

We all know the history of the origin of this bill. It was reported early this session, and originated in the message of the President recommending a vigorous prosecution of the war. Its leading and main object was to carry that recommendation into effect, as has often been stated on this floor by the chairman of the Military Committee, and others who have advocated its passage. Indeed, it has been repeatedly acknowledged that it would not be necessary but for that purpose. If, then, we should pass this bill, according to my conception, it would be, in fact, to give a pledge to the Executive and to the country, that if the treaty should fail, we will resort to the vigorous prosecution of the war in conformity to the President's recommendation at the opening of the session. I, for one, am unwilling to give such a pledge; unwilling, because I think it ought not to be given if it could be redeemed; and unwilling, because, if given, I am of the impression it never could be redeemed.

I have assigned fully, on a former occasion,¹ the reasons why I

¹ In the Senate, Dec. 15, 1847.

am opposed to what is called a vigorous prosecution of the war. I will not repeat them here further than to state that I am opposed to it, first, because it will annihilate the Mexican government and leave no authority in that distracted country with whom we could treat; and next, because the effect of that would be to subject the whole country, and throw on us one of two alternatives — either to create a government by our own authority, with which to treat (to which no true republican would ever assent), or to hold it as a conquered country, to be governed as a subject province or incorporated into this Union. Now, as I am utterly opposed to either of these results, I cannot give this pledge.

Nor can I give it, because I have not the least expectation that, if given, it will ever be redeemed. The sentiment of the whole country is remarkably changed, since the commencement of this session, in reference to the war. There was, at that time, a large party scattered over every portion of the country in favor of conquering the whole of Mexico. To prove that such was the case it is only necessary to refer to the proceedings of numerous large public meetings, to declarations repeatedly made in the public journals, and to the opinions expressed by officers of the army and individuals of standing and influence, to say nothing of declarations made here and in the other House of Congress. But this sentiment is now changed. And why is it changed? Because the people were not aware at that time that what was called a vigorous prosecution of the war would, under existing circumstances, inevitably lead to the consequences I have stated, whether intended or not. But as soon as they saw that such would be the consequences they drew back, and put the seal of their reprobation upon them, not only for the present, but I trust forever. Such being the case, it is an idle dream to suppose that in the event of a failure of a treaty, this war would ever be renewed to be carried on vigorously, with a certain knowledge of the results to which it will lead. It is, indeed, highly honorable to the good sense and patriotism of 35

our people, that seeing that the result of the policy recommended would be to conquer Mexico, to be held as a subject province or incorporated in this Union, they have raised a nearly unanimous voice of reprobation against it, in despite of the temptation held out to their pride, ambition, and cupidity, by the advocates of a vigorous prosecution of the war.

But, it may be asked, what shall be done if the treaty be not ratified by Mexico? Should such be the case, no alternative would remain but to adopt the line of boundary established by the treaty, to take possession of the country by it, and defend it against Mexico, if she should ever attempt to disturb our possession, which is hardly probable. She is too weak, distracted, and exhausted, even if she should be so inclined. Nor would we be subject to any additional cost, compared to what we would be subject to in holding the country in our possession under the treaty; for it would take fully as large an army and as great an expense to protect Mexico, under the stipulations of the treaty, against the Indians falling on our side of the line, as it would take to protect ourselves against the Mexicans by assuming the line without the treaty; while we would save the large sum of twenty millions of dollars, in the latter case, to be paid to Mexico in the former. Indeed, the whole affair is in our own hands, whether the treaty fails or not, if we do but exercise a little common sense, and avoid, what I detest above all things, a system of menace and bravado into which we have lately fallen in the management of our negotiations. I had hoped that this system had been abandoned forever after the bad success which has attended it. It was resorted to in the Oregon negotiation, and would have terminated in involving us in a war with England, but for the firmness and wisdom of this body. It was resorted to in our negotiations with Mexico. The order to General Taylor to march to the Rio Grande constituted a part of it. I cannot believe that the President, in giving the order, contemplated, or even believed, it would lead to a conflict between the armies of the two countries, because

if he did it would have been an impeachable offense. It was intended but as a menace to bring Mexico to terms, but, unfortunately, under circumstances which prevented the interposition of the Senate to prevent a conflict, as in the case of Oregon, and this unhappy war, which we now so much desire 5 to terminate, was the consequence.

But the vigorous prosecution of the war was not the only avowed object for introducing this bill; it was, indeed, the primary and principal one; but there was another, secondary, it is true, though not much less important. It was intended, in 10 part, to carry into execution a system of imposts and taxes, imposed by the President, by his own authority, upon Mexico. The army, including the very force to be raised by this bill, was intended to be used for collecting these duties and imposts; and for that purpose, as it was avowed and officially announced, 15 was to be spread all over Mexico.

Now, I hold we cannot pass this bill without sanctioning the act of the President in imposing this system of imposts and taxes. This I never can do, because I am under a deep conviction that the President has no right whatever to impose them, 20 and that in so doing he acted without the authority of constitution or law, and established a precedent, which, if it be not reversed, will be fatally dangerous to the liberty and institutions of the country. Thus thinking, I would not be true to my trust if I did not raise my voice against it. I would, indeed, 25 have been glad not to have been forced, at this time, to do so. My friends around me know that I was anxious that this bill should not be pressed to its passage now. Not that I desired to shun the responsibility of expressing my opinion, but because I preferred postponing it until after the treaty was ratified, 30 when there would be no pretense for raising the cry of giving "aid and comfort" to the enemy. But as it has been resolved to force the bill through, as this is the first measure proposed since the adoption of the system, a vote on which would sanction it, I feel myself compelled by the highest obligation of duty to state 35

my reasons for opposing it. If, under circumstances, it involves any responsibility, it ought to fall, not on me, but upon those who, without any necessity, as I have shown, have forced me to express my opinions.

But to return to the discussion. I ask, where can the President find authority for laying duties and taxes on the commerce and people of Mexico? If it exists at all, it must be found in the Constitution or the laws; can it be found in the former? If so, point it out. Can it be found in the laws? If so, point it out. It will not be pretended that either confers, expressly, any such authority upon him, but it may be said that it is embraced in his implied powers; that is, the powers necessary and proper to carry into execution those expressly vested in him. If so, point out the powers expressly vested in him by the Constitution, which this is necessary and proper to carry into execution. But let me say to the advocates of this bill, if you could succeed in doing this, which you cannot, it will not remove the difficulty; for, by showing that it is an implied power, you but impose upon yourselves the necessity of pointing out some act of Congress authorizing its exercise. The framers of our Constitution had the sagacity to vest in Congress all implied powers; that is, powers necessary and proper to carry into effect all the delegated powers wherever vested. I refer to what is usually called its residuary clause, which provides that "Congress shall have power to pass all laws necessary and proper to carry into execution the foregoing powers [that is, powers vested in Congress], or powers vested in any of the departments or officers of the government." It matters not, then, in what department or branch of the government a power may be vested, whether in the Legislative, the Executive, or the Judiciary, or in this or that officer of the government, it belongs to Congress, and exclusively to Congress, under this express provision, to pass all laws necessary and proper for carrying it into execution.

The effect of this important and sagacious provision is to vest Congress with all the discretionary power; and, of course, 31

making it necessary for the other departments to show an express provision of the Constitution or some act of Congress to authorize the exercise of any power whatever. It is thus that this government is made a government of constitution and law and not of discretion. And, of course, the advocates of the bill, 5 even if they could show it to be an implied power, must still show an act of Congress authorizing its exercise.

But it may be said that the President is commander in chief of the army of the United States, including the portion in Mexico, and that it is essential to his power, in that character, to impose 10 a system of taxation in case of a foreign war in the enemy's country. If, indeed, it be essential to his power, as is supposed, it results that it cannot be separated from it without destroying the power itself, and it must, of course, belong to him, as commander in chief, wherever he exercises its powers, and, of course, 15 as well in the United States as in Mexico, or any other conquered country. But it is manifest that it cannot be essential to his power in that character within the limits of the United States, because the Constitution expressly vests the power of taxation, not in the President, but in Congress. To this it may 20 be replied, that there is a distinction between exercising the power in the United States and exercising it in Mexico, or any other place beyond the bounds of the United States, where our army may be operating. To those who make this reply, I put the question, Why so? What makes the distinction? What 25 possible reason can be assigned why the power may be exercised in one and not in the other? Who can answer these questions?

But if it be a fact that the President can exercise in Mexico a power expressly delegated to Congress, and which he cannot exercise in the United States, I would ask what are the limits 30 to his power in Mexico? Has he the power also of appropriating the money collected by the taxes, without the sanction of Congress, when the Constitution expressly provides that no money shall be appropriated without authority of law? Has he the power to apply the money to whatever purpose he may 35

think proper, and, among others, to raise a military force in Mexico, without the sanction of Congress, when the Constitution expressly vests the power of raising and maintaining armies in Congress? If he can exercise these important powers expressly given to another department, what is there to prevent him from exercising all the powers of the Constitution, or any other that he may think proper? If so, he stands in a twofold character in the two countries — the constitutional President of the United States, and the absolute and despotic ruler of Mexico. To what will this lead? What may he not do? He may lay taxes at his pleasure, either as to kind or amount — he may establish rules and regulations for their collection. He may dispose of them as he sees fit, without passing their proceeds into the treasury. He may, of course, raise armies, and pay them out of the proceeds of the taxes. May, do I say — he has already done all this upon his own exclusive authority, without deigning to consult Congress. How much further may he not go? May he not wage war on his own authority against the adjacent country of Guatemala and the South American states, to the extreme limits of the continent? May he not equip a fleet and attack the islands of the South Sea, or conquer Japan, or the adjacent parts of the continent? May he not, finally, turn his army against his own country, and make it the instrument of her subjugation? All this he may do, if it once be conceded that he has the power of doing what this bill is in part intended to enable him to do, without the possibility of Congress preventing.

But, it may be asked, do I deny him all power, — and if not, what are the limits of his power in Mexico? No; I admit that he has power and important power — nor am I at a loss to assign its limits. The Constitution assigns to him the power of commanding in chief the army, wherever stationed — a power which gives him the command in chief, and no more; that is, the supreme control in conducting and directing the army in its military operations. Such is the true interpretation of these

words. They confer neither more nor less power. Instead of conferring an absolute power, as is supposed, they confer relatively a very restricted one, of which the Constitution and legislation of the country furnish many evidences. The very act which recognizes this war with Mexico furnishes a striking illustration. Upon its face it shows that the act of recognizing or declaring war did not necessarily carry with it the authority even of employing either the army or the navy for its prosecution — for the power of employing both is expressly vested in him by the act. If we look back to other acts declaring war, we shall find that they, in like manner, confer the same power. If we turn from these to the laws for suppressing insurrection or repelling invasion, we shall find their framers deemed it necessary to authorize the President to employ the militia and the army for the purpose. If we turn to the Constitution, we shall there find decisive evidence of its being regarded by its framers as a power within narrow limits. For if there be any power which one would suppose might be inferred to belong to the commander in chief, it would be that of establishing rules and regulations for the government of the army and navy, and yet this very power is given by an express provision to Congress. Is it not strange that with all this evidence, and much more that might be added, going to show how restricted the power of the President as commander in chief is, there should be any one, and especially any professing popular principles, who would give the unlimited and despotic power claimed for the President in Mexico ?

But, it may be asked, has the conqueror no power to impose taxes on a conquered country ? Yes, he certainly has. When an army invades a country and subdues it, in whole or in part, the conqueror has unquestionably the right; but under our system of government, the question occurs, Who is the conqueror ? I answer, the people of the United States. It is they who have conquered Mexico — not the government — not the President — not the generals — not the army ! These are but the instru-

ments by which they effected the conquest; and it is the people of the United States, in the character of conqueror, that have the exclusive right to impose taxes. But who represents the United States? — who is the organ through which they must act for the purpose? I answer, this government — the federal government of these states — consisting of the Executive, Legislative, and Judicial Departments — each in its proper sphere. The question then is, Within what sphere does the President properly and exclusively represent the United States in a conquered country? The answer is, in no other than that of commander in chief of the army and navy. In almost all other respects Congress is the sole representative, and to them especially belongs, by express delegation, the power of laying and collecting taxes, without restriction or distinction, as far as the authority of the United States extends. Now it is an established principle of international law, that wherever a country is subdued, even in part, its sovereignty is for the time suspended, and that of the conquering country substituted in its place. Of course, in our case, with the sovereignty of the people of the United States, the authority of their government, through its respective departments, attaches to it in like manner as if it were a part of the United States, each acting in its appropriate sphere. The opposite doctrine, which would make the President the sole and exclusive representative of the sovereignty of the United States in such cases, is entirely destitute of authority, and would lead to all the monstrous consequences which have been traced.

All this is so clear that it is not a little surprising that it should have been overlooked in the prosecution of this war, or that there should have been any division or diversity of sentiment in reference to it; and as the taxes which are the subject of these remarks were imposed by the President in the interval between this and the preceding session, and as this is the first opportunity I have had to express my opinion in reference to the subject, as I have already stated, I avail myself of

the occasion to put in my most solemn protest against the power. If it should become a precedent in future wars, it would lead to consequences of the most fatal character. It would elevate the power of the President above that of the other departments and the Constitution itself, and end, almost 5 necessarily, in establishing despotic authority in that branch of the government. The danger is imminent. We are a war-like people, rapidly increasing in numbers, population, and wealth — well fed and well clothed, and having abundance of leisure — like all such people, we seek excitement; and there is 10 no excitement more seductive to the young and ardent portion of our population than war. It is difficult to prevent such a people from rushing into war on any pretense; and if wars should frequently recur, and this precedent be not reversed, nothing can prevent the Executive power from overshadowing the 15 Constitution and liberties of the country. We now have an opportunity to reverse it, if we think proper, by giving a strong and decided vote against a bill the passage of which, as has been shown, is perfectly useless, and even worse than useless.

It is proper to remark, in conclusion, that I am aware that 20 there are some doubtful questions as to the extent of the power of the President in his character of commander in chief. Among these may be ranked that of levying contributions, in the strict sense of the term, and establishing temporary governments. I will not now enter on the investigation whether they belong to 25 him or not, but my impression is that in the portion of the enemy's country in which the authority of the United States is established for the time, he has not the right, without the sanction of law, to levy contributions, or to establish temporary governments. In coming to this conclusion I readily concede 30 to the President, as commander in chief, many and great powers, but they are such as arise out of exigencies immediately connected with the operations of the army, and its success or safety. Among them I include the power of seizing supplies of every description, and of removing every obstacle necessary to be 35

removed for security or victory. For that purpose, towns and cities may be battered down and destroyed; but when he undertakes to exercise power, on his own authority, over subdued territories, unconnected with the operations of the army, he exercises, in my opinion, a power not belonging to him. Congress may by law, indeed, authorize him to levy contributions, or to establish temporary governments in such territory; but it is one thing to exercise it on his own authority, and another to exercise it under the authority of law. The one places him under the control of law, while the other places him above its control.

I have now expressed my opinion. In all I have said I have put myself, I trust, above party feelings or personal considerations. I am actuated by the single motive,— a desire to prevent an unconstitutional and dangerous act from becoming a precedent, which there is great cause to fear it would, if not noticed or exposed.

MR. CASS'S REPLY TO MR. CALHOUN

MR. PRESIDENT: The distinguished Senator from South Carolina, in the discussion of yesterday, gave his opinions upon some important topics connected with this bill. The questions presented by him are of the highest importance, and were urged with all that closeness and clearness which characterize his intellectual labors. I desire to express not only my dissent from his conclusions, but, as briefly as may be, the views that have struck me during the short period I have had to reflect upon the subject. At the very commencement I feel a difficulty, which will be obvious to all that know — and who does not know? — the process, at once compressed and logical, by which that Senator reaches his deductions; in consequence of being compelled to rely upon my memory, and not having been able to read his speech, which has been laid upon our table since we took our seats in this chamber to-day.

However I may have misapprehended him, during the process of his remarks, I did not misapprehend him at their commencement. He began by asserting that there was not a single reason in favor of the passage of this bill. Certainly, sir, this assertion is far too broad. We may differ as to the weight of the arguments in support of this measure, but to pronounce, almost *ex cathedra*, that there is no argument at all which would justify its passage, seems to be rather a bad augury for fair investigation.

The Senator says it will be mischievous here, because it will have a tendency to alarm the money interests. Now, sir, I have no invidious comparison to make among the various occupations of our community — the members of which, while laboring for themselves, are contributing also to the wealth of the country. It is not my habit. I would merely remark, that questions

affecting the honor and interest of the country, in her communication with other nations, must be decided upon much higher considerations than the effects they will produce upon the stock market, and upon the fluctuations which give to its speculations the spirit, sometimes, of gambling rather than of sober calculation. But, sir, I do not agree with the Senator in his anticipations. If, as I understand him, a peace is necessary for the wholesome operation of the moneyed interests, any measure having a tendency to promote peace would give confidence to those who control it. If, sir, an overwhelming force were immediately raised and dispatched to Mexico, no man can doubt but that this war would be immediately terminated; and the more vigorous our preparations — the more fixed our determination to prosecute it vigorously! — the more convinced shall we be, and the Mexican people also, that peace will come, and come speedily. So far from viewing this subject as the Senator does, I consider every step we take towards vigorous preparations a step toward peace; and I believe it will strengthen, and not weaken, the confidence of the moneyed men, and aid, instead of injuring, the money market. If we go on with a series of timid, irresolute, and indecisive measures, we may prolong this war till doomsday. If we strike one vigorous stroke we may terminate it without delay.

The Senator says, also, that the passage of this bill will be mischievous in Mexico, because it will animate some of the parties into which that unhappy country is divided, to increased exertions against us. If this be so, it presents to me a new chapter in human nature. When our country is at war, or apparently approaching it, to put on an armor and an attitude befitting the occasion would be, according to this new principle of national intercommunication, impolitic, if not dangerous, as it would excite the enemy to more vigorous action. Mr. President, it is not thus I have read history, and it is not thus that public disputes are brought to satisfactory termination. If in peace to prepare for war is a wise sentiment, 35

now become an axiom, certainly when hostilities have actually commenced, and two powers are contending for the mastery, if one relaxes its preparations for fear of animating the exertions of the other, it is not difficult to foresee to what dishonor such a course — whether originating in pusillanimity or false magnanimity — must necessarily lead. 5

But, sir, are there no reasons why this bill should now pass? There are, sir, and very strong ones too — so decisive, indeed, that even the powerful intellect of the Senator from South Carolina has not been able to satisfy me that there is one substantial objection to the measure. 10

We are at war with Mexico. The papers, indeed, of to-day tell us that an armistice for two months has been concluded. That is liable to be broken, and hostilities resumed, from one day to another, as accident, or design on the part of the enemy, may dictate. And a proof of their bad faith, in a similar arrangement at the city of Mexico, should warn us that little reliance can be placed upon these stipulations; and, indeed, the very dispatch which brought us information of the armistice, brought us also information that it had been broken. And happen 20 what may in the mean time, this armistice, at the end of the term, must give way to hostilities, unless prolonged by mutual consent or terminated by a peace. And certainly it will not be prolonged by us, unless a peace is to take its place.

Now, sir, what does a wise precaution require? It requires 25 us to strengthen our forces in Mexico, and to make the most vigorous preparation to prosecute the war with renewed exertion, should our efforts to procure a peace prove fruitless.

You know, Mr. President, and the Senate knows, and the country knows, that a paper has arrived here, and gone back to 30 Mexico, with the *imprimatur* of this body upon it, modified, indeed, but still fixing terms which will lead to peace if accepted by the Mexican government. Now, sir, it may be accepted there, or rejected, no man can tell which. The government is unstable, the people intractable and turbulent, and the country 35

split into factions, warring against one another and each contending for supremacy. In such a state of things, what is our duty? It is, as I have already said, to be prepared for contingencies, and to recommence our military operations with the utmost vigor, as soon as the war recommences, if that event should happen.

But, in the second place, the very preparation we make may be the reason for rendering its employment unnecessary. If the government and people of Mexico see, by the measures which we have taken here, that there is an absolute determination to overrun and overcome their country, that would furnish a strong motive for their acquiescence in the terms of peace. As our relaxation would encourage them to resist, so renewed exertions on our part would show them the futility of resistance and would leave them no hope but in doing us justice. So much for the reasons in favor of the passage of this bill. The force it contemplates to raise may not be wanted. In that event it will not be organized, and no injury will be done. It may be wanted, and in that event it will be ready for such contingencies as may happen.

The Senator from South Carolina says, that when the President, in his annual message, asked for this force, he did so in order to be able to prosecute the war more vigorously, and that to vote for this bill is to give a pledge that this should be done. This may be so, sir; but whether so or not, I am ready to give any necessary pledge upon the subject. The Senator is not in favor of a vigorous prosecution of the war, even should we fail in our efforts to obtain a peace. What are his views upon this subject, sir? He says that at the commencement of the session the opinion was spreading everywhere that the whole of Mexico should be annexed to the United States; but that since that time a change has been going on, — the result, I suppose, of our discussions, — and that the acquisition of the whole Mexican territory is no longer desired. For my part, sir, I see no change whatever upon this subject. I believe the 31

prevailing sentiment is now just what it has been during the whole progress of these hostilities. The Senator, in his remarks upon this subject some two or three months since, when asked for the proof that the acquisition of all Mexico was desired by the American people, referred to one or two demonstrations 5 that had taken place at one or two public meetings, but failed to produce the slightest evidence, as indeed there was none, that the American people had determined upon this great experiment. The sentiment prevailed then, and prevails yet, that we may be compelled to make it, by the obstinate injustice of the 10 Mexicans, and that, if we cannot terminate the war in any other way, we must terminate it by taking possession of their country and holding it subject to our power, and with some kind of a government to provide for its internal security.

Well, sir, this state of things may come, but I hope not. But 15 it will not be prevented by speeches and resolutions in this body. It will be prevented by much higher events. For myself, my opinion has been unchanged, and I have several times expressed it in this chamber. I think the annihilation of the Mexican government and the annexation of the whole Mexican 20 territory would be a serious injury to our confederacy. I see great inconvenience in the measure and many sound practical objections to it. But I repeat also my previous declaration that I am not one of those who believe that even that step would be fatal to us. My confidence in the progress and dura- 25 tion of this government is unshaken and unshakable. Its destiny, under God, is committed to the people, and no other earthly power can destroy it. However extensive may be the sphere of its operation, it has in it a spirit of vitality growing out of the very principle of its formation and objects, — the will 30 of all for the good of all, — which will enable it to resist many of those shocks of time and accident to which other governments have been exposed and have fallen victims. If all this is a dream, sir, it is a very happy one, and a dream from which I have no wish to be awakened.

The Senator from South Carolina, instead of a vigorous prosecution of the war, proposes to withdraw our troops from the other portions of the Mexican country and to establish them upon a line which shall be the boundary of the territory which we intend to hold. This proposition has, in substance, been twice before made by the honorable Senator: once at the last session of Congress, and once some weeks since at the present. He supported his views then and now with that force which marks his reasoning. But while he interested, he did not convince me. There never was such a line, there never will be such a one. I say it with all deference, but with a perfect conviction of the truth, that such a line is impossible. That which the Senator proposes, runs from the Rio Grande to the Paso del Norte, probably about eight hundred miles; and thence, with a deflection not necessary to notice, to the Pacific Ocean, which is a little less than an equal distance; making upon the whole route probably fifteen hundred miles. The force required to defend the line of the Rio Grande the honorable Senator does not give; but he thinks a small one would be sufficient. I have conversed with one of our ablest generals upon this subject and he considers 20,000 men necessary to the defense of the Rio Grande frontier.

From the Paso del Norte to the Gulf of California, the Senator from South Carolina thinks that one regiment and a few small vessels of war would be an adequate protection against Mexicans and Indians. What effect armed vessels can have in the defense of a line which stretches six hundred miles beyond them, as I do not comprehend, I will not stop to inquire. Their guns would probably command the beach, off which they might anchor, if they anchored near enough. But I do not believe that a Mexican guerrilla would place himself within their reach in order to cross a line open to him in all directions. As to the regiment, if equally divided, its numbers fit for duty would probably give one man to every mile of distance between the Paso and the Gulf; certainly not more. With no natural

boundary, with no defensive stations (for how many could a few hundred men occupy and defend?), with a boundless region on both sides; with the necessity of bringing supplies through long, difficult, and exposed routes; and with the ever consuming disorders of the climate — how could such a line be defended with such a force? Our troops must be in detachments, or they can afford no protection; while the enemy may be in masses and bring their whole force to operate on a part of ours. If we are defeated, we are destroyed; for we have no reinforcements to order up, nor to fall back on. Our point of support might be one thousand miles off. If the enemy are defeated they retire beyond an enchanted line where danger cannot come. 5

But after all, what good would this do, even if the line could be defended? How would it bring peace? What possible motive would the Mexicans have to make peace in such a state of things? They have it at all times when they desire it; for the line is a Chinese wall, beyond which we may look indeed, but must not pass. For if we should pass it we should that moment abandon our plan, confess its inefficiency, and commence a new system of operations to recover the ground from which we had retreated before entering upon this dangerous experiment. We assume our line. We take a position behind it, covering the country we intend to hold. It is a *sine qua non*; and we will not treat with Mexico until she relinquishes all right to the region we claim. What, then, has she to gain by peace? No territory, for all we hold we keep; no honor, for that is compromised by the cession; no exemption from the evils and calamities of war, for she is just as secure behind the line, while the *statu quo* lasts, as she would be if a treaty were signed, sealed, ratified, and promulgated. If she choose to sit still, there is peace; if she choose to attack us, she attacks us, and, if successful, follows up her advantages till she strikes a decisive blow; but if unsuccessful, she retires behind her barrier and awaits a better opportunity to renew her efforts. Such a state of things 35

would be interminable, for anything I see. No government could maintain it. No public sentiment could bear it. Mexico would have every motive to continue it, because the chances of the future might give her success and restore her territory; whereas they could do her no injury, and in the mean time she would not put the seal to her own dishonor. 5

As to the defense of a line between coterminous countries, it rests upon very plain principles. If the countries are at war, one or the other, or both, will attempt to cross it. Neither will remain behind their line for the avowed purpose of defending 10 it, unless, indeed, one of them is so weak that offensive measures would be impracticable. If an irruption is made, the party making it has necessarily some military operations in view, which, if successful, it pursues, but if unsuccessful, it abandons and returns. The defense of the line itself, in this state of things, 15 becomes a secondary object, yielding to ulterior considerations, involved in the plans of operations. An invading force, if repelled, must be followed, and, if followed, must be pursued to its places of refuge or the battlefield, where the fate of arms must decide the contest. Any contest between nations, involving 20 other principles, would be irreconcilable with public sentiment, and incompatible with the plainest dictates of policy. No, Mr. President, let us go on in the old-fashioned way, — I will not say the good old-fashioned way, because the term would be inapplicable and improper, but I will say the approved old- 25 fashioned way, — and wage this war as our fathers waged war before us, and as our sons will probably wage it after us, if driven to this last appeal of nations. Let us discard these untried plans and place our faith in experience, and not in experiments. Let us push our operations, firmly as need be, but mercifully 30 as may be, till we have conquered enough of the country to overcome obstinate injustice, and thus to conquer a peace.

But a principal object of the Senator from South Carolina seems to be, to place the Administration in the wrong in the measures it has directed to be taken, for levying contributions 35

for the support and subsistence of our army in Mexico. To do this he has commenced with what I consider a fundamental error, that, when we enter an enemy's country in war, we take with us all the powers of our own Constitution. If it is meant by this that an invading army has the right to exercise all the powers fairly derivable from the Constitution, and relating to a state of war, the proposition is true, but entirely useless for the purpose of the honorable Senator's argument. But if it is meant that the guarantees of the Constitution accompany the army and operate upon the movements of our troops in a hostile country, nothing can be more erroneous in principle and more injurious in practice. The slightest reflection will satisfy any one that the extension of our constitutional guarantees over countries occupied by our armies would be utterly subversive of all the rights of war. We could not march a step without finding impediments that could not be overcome. The provisions of the Constitution are:

"That Congress shall have power —

"To declare war, grant letters of marque and reprisal, and make rules and regulations concerning captures on land and water. 20

"To raise and support armies.

"To make rules for the government and regulation of the land and naval forces."

The Constitution further provides that —

"The President of the United States shall be commander in chief of the army and navy," etc. 25

These are all the provisions of the Constitution upon the war-making power.

In the whole history of our legislation there are but two provisions respecting the conduct of our forces in foreign countries, and these are coeval with the government, having been first passed in 1775, and again in 1806, and forming thus a permanent part of our military code. These two provisions are in articles fifty-one and fifty-five of the rules and articles of war. The former declares that — 35

"No officer or soldier shall do violence to any person who brings provisions or other necessities to the camp, garrison, or quarters of the forces of the United States, employed in any parts out of the said States, under pain of death, or such other punishment as a court-martial may direct."

The latter declares that —

5

"Whoever, belonging to the armies of the United States employed in foreign parts, shall force a safeguard, shall suffer death."

Here is our whole written legislation, constitutional or congressional, upon this subject.

Now, sir, like other nations, we are liable to war, and when 10 engaged in it we are entitled to all the rights which that condition brings with it. Nor do I believe that those rights are in the smallest tittle diminished because we choose that our Chief Magistrate should wear a hat and not a crown, to follow out an allusion made this evening by a distinguished Senator. Our 15 army, in the prosecution of war, enters a hostile country. What may it do there? Originally, in the early ages of the world, the right of conquest included an unlimited right to seize and dispose of the persons and property of all the people subjugated by its arms. Hear the earliest Jewish historian: 20

"And we took all the cities at that time, and utterly destroyed the men and the women, and the little ones, of every city; we left none to remain."

"Only the cattle we took for a prey unto ourselves, and despoiled the cities which we took."

In the progress of time, however, better sentiment prevailed, 25 and humanity endeavored to check, if not the progress of conquering armies, at least the evils that followed in their train, by laying down rules for assuaging the calamities of war. These conventional rules, established by the general concurrence of civilized nations, now constitute that part of the law of nations 30 applicable to this subject. To be sure, they are liable to be violated, and, when not violated, to be narrowed in their operations by controlling circumstances; but their general obligation no one of the present family of nations calls in question.

I repeat, what may our army do in a hostile country? It may do anything proper to promote the objects it has in view, which is not prohibited by its own government or by the law of nations. It goes forth to battle and to conquest. Its effort is to subdue the enemy by all the aggression it can exercise. 5 To injure him, when, how, and where it can, subject only to the limitation I have laid down, in order to compel him to accept the terms of peace prescribed by its government.

But in the practical exercise of these powers we are met, *in limine*, by a suggestion of the honorable Senator from South 10 Carolina, that it is the conqueror to whom they belong, and that this conqueror is the sovereign, and the sovereign in the United States is the people, who alone can exercise these high attributes, or at any rate some of them. It may be remarked, however, that they do not belong to the conqueror, as such, but to the 15 enemy. Whether an invading army is advancing or retreating, victorious or defeated, its rights are still the same, and belong to it as long as the last band composing it remains in arms upon the hostile territory. But let that pass. The Senator also says that the people in this country are the sovereign. I shall 20 take no issue with him upon that proposition; I concede it in the fullest extent. It is one of the first lessons we learn after leaving the cradle; it is as broad in its operation as this broad land, and the sentiment itself is probably one of the last we abandon in life. But, sir, what then? The Senator will not 25 require the sovereign people of the United States to exercise all their right, either of peace or war, in person. This is done, and must be done, by their agents, civil and military, who are responsible to them, and controlled by the laws they choose to establish. And if our sovereign may not exercise all the just 30 powers of war by our military officers, which a European sovereign may exercise, in person or by proxy, it follows that countries with monarchical forms of government have important rights of independence which do not belong to us. I dissent, *toto celo*, from any such doctrine and from any principles neces- 35

sarily leading to it. We stand on the broad platform of national equality, and will not yield the smallest particle of our rights to foreign pretensions, royal or imperial.

Well, sir, our army commences its operations. It may overrun the whole hostile country, doing all those deeds of distress and death which it must do, to a great extent, to accomplish the objects of its destination. Whence does it derive those powers to do all this, let me ask the Senator from South Carolina? Not from the Constitution and the laws, except from the general powers I have quoted relating to war, for there is not a single specific grant in our whole code looking even to such a state of things. Let him, or any one else, put his finger upon that clause of our statute book which authorizes an American soldier to kill a Mexican, to burn a house, or to seize and hold a city, or to do the thousand and one acts of violence which go to make up the condition of war. Well, then, even without specific powers from our sovereign, our army may do these deeds, simply because a war exists, and they are proper incidents. No other grant is necessary. Our sovereign says to our armed citizens, I am at war; go forth and maintain the honor and interest of your country. Now, having shown what an army does and may do, I may call upon the honorable Senator to show what it may not do, within the limitations I have laid down. He will acknowledge it may kill a Mexican, not because it is expressly authorized to do so by law, but because that act is proper in its operations and is allowed by the general laws of warfare. The right to levy supplies, whether of money, of clothing, of the means of transportation, and of other objects not necessary to be enumerated, belongs to the state of war. No one will deny that fact. It accompanied the first and the last army that ever entered the battlefield, and will accompany every one that may hereafter follow in the same career. In Europe it has been common, in later years, to subsist and support armies in the enemy's country, and there have been cases, and I believe not a few of them, where they have sent home to the national treasury

large sums collected during their progress. The Allies, on the downfall of Napoleon, levied upon France a contribution of 1,500,000,000 of francs. Whenever a European army enters an enemy's country it calls upon the municipal authorities of each city and town to contribute such supplies in kind and such amount of money as it chooses to demand, under the penalty of military execution. That threat, I believe, has never yet failed. No one calls in question the right of our troops to take supplies in kind as an incident to war. Let those who maintain the distinction, either in principle or practice, between supplies in kind and cash, show it, and show where is the power to demand the one and not the other. 5 10

Why, sir, the error of the Senator from South Carolina I conceive to be this: He seems to think that an express grant of power from the sovereign of the country is necessary to the exercise of some of the rights of war. If to some, they are to all; for the most acute mind can draw no line between them — I mean those usually exercised in legitimate warfare. As to the power of the sovereign to restrain the use of these means of carrying on war, or to prohibit them entirely, there can be no doubt. Congress, the legislative agent of our sovereign, may at any time establish an entire code for the conduct of our armies in hostile countries, and may restrict their powers within the narrowest limits. The question, however, is not what Congress may do, but what it has done. It has yet done nothing of the kind, and our troops are free to act as the good of the country may require, and as the incidents belonging to a state of war fairly permit. The exercise of these powers is, of course, vested in the commanding officer, unless directed or restrained by superior authority at home. The President is the constitutional commander in chief, and, whether present or absent, may direct the operations of our armies, and prescribe the mode of conduct they shall adopt. He has done so in the present case. 25 30

I see no difference, sir, in the application of the general principle arising out of the mode in which a contribution is enforced. 35

Whether it is levied by the agency of our own officers or of Mexican officers, the power is the same, and whether upon municipal authorities, upon classes, or upon individuals. The fairer and more equal is the mode, the less is the injury and the greater is the satisfaction. And an American army, of all other armies, should seek to attain its object with the least distress. The contribution is an assessment, and all must pay it who are subject to the rules of war. And it is the nature and not the name of the thing which determines its true quality. Call it as you please, tax, duty, impost, supply, contribution, or what not, it is a forcible demand of private means, made by an army in an enemy's country, of such a nature and amount as the commander of the army may direct, rendered more acceptable in the present instance by being levied and collected in conformity with the Mexican laws, and thus accommodating itself as far as possible to Mexican usages. There never was a better form of contribution than that which we have adopted — one more equal in its operation, or less oppressive in its administration.

Now, sir, what is the objection to this? I understand there are two reasons urged by the Senator from South Carolina against the course of the Administration on this subject: the first constitutional, and the second political. With respect to the first, if I comprehend the train of reasoning used by the Senator, he considers the contributions required by our army in Mexico as taxes, and their collection as an exercise of the tax-levying power conferred only upon Congress by the Constitution. I cannot, sir, for myself, doubt for a moment that that provision of the Constitution is confined to the United States. As I have already remarked, if the guarantees of that instrument accompany our armies, we may just as well abandon all attempts to carry on offensive operations abroad, as our armies could not march a foot without finding themselves surrounded with insuperable obstacles. Congress may undoubtedly prescribe the mode in which forced impositions may be collected in an enemy's country. But it may do that, not under the tax-

levying power, but under the war-declaring, and thence war-regulating power. It may put an end to the practice, and when it regulates or prohibits it, its decision becomes the law of our armies, for a strict obedience of which every one, within his proper sphere, is responsible; but until Congress does interfere, 5 the right and its exercise depend on the principles I have stated, and not upon analogies, verbal or substantial, applicable only to a different state of things. I cannot but remark, however, sir, that if any one who has doubts upon this question will run his eye over the Constitution, he will see at a glance that its 10 powers and protections are intended, not for a foreign country, but for our own. That would be a strange construction indeed which would give to the Mexicans the right "to be secure in their persons, houses, etc., to a speedy and public trial by an impartial jury," and to all the other political blessings which 15 make our government what it is. And who shall divide the Constitution, and tell us what portion operates abroad, as well as at home? That the whole of it does not follow our armies is clearly shown from the consequences which would flow from such a construction. There is but one practical solution of the 20 difficulty, and I use that word "difficulty" in deference to the opinions advanced by gentlemen of the most powerful intellect, and not because I feel the slightest doubt myself; and that solution is to confine the Constitution to our own country, except where its provisions obviously extend abroad; and this 25 brings us again to the war-making power, which would enable Congress during the continuance of hostilities to provide at its discretion for the government of countries held by our armies.

The political objection urged by the Senator against the exer- 30 cise of this power is founded in the dangers which might result from it. Well, sir, there is danger in such a power. There is danger in all war powers. The distinguished Senator, in a speech last session, which few will ever forget who heard it, depicted with his peculiar force the danger of triumphant generals return- 35

ing with conquering armies; even his graphic description did not appall me, for our generals and our armies are but constituent portions of our people, and I trust for many a generation will mingle with the mighty mass of American freemen, without delay and without reluctance, as soon as their military duties are terminated. But there are greater dangers than these, and first among them is the loss of national honor. Discard your military means, because the plains of liberty are filled with the crumbling monuments of republics overthrown by a disloyal soldiery, and where would be your own safety in these days of national ambition and aggrandizement?

From my own views of our institutions, and from the opinion I have formed of the character of the American people,—formed during an active life, passed under circumstances which brought me into contact with men of all opinions and pursuits,—I consider the destruction of this government by military usurpation as one of the very last evils which threatens us; to be apprehended only when our necks are prepared for the yoke, and when it will matter little who puts it on.

The President may abuse his power, says the Senator. Certainly he may, and so he may abuse any power; but powers must be granted, though they may be abused. If any one fears that result now, let him prepare a legislative remedy to prevent it. As that is not my case, I shall not volunteer my services for such a work; but I am prepared at any time to look into the whole matter, and to hold all who have taken part in it to a strict accountability. The President desires nothing else, nor his political friends for him; and I predict that any investigation will but commend the Administration the more to the confidence of the country. But let not a most important right belonging to the American people, and one which may be essential to their military success, be cast to the winds, because sometime or other, or somewhere or other, abuses may grow out of its exercise.

In our investigation into the origin of this war, there are two

separate questions which present themselves for considerations: one which may be termed external, and the other internal. The former connects itself with us as a people whose character and conduct have been arraigned before the world, and the latter concerns ourselves alone, as it relates to the course of the Executive in the earlier measures which led to the war. The war itself may be just, and we stand acquitted of every charge of aggression; while the President may have passed beyond the limits of his constitutional duty and assumed to direct, where Congress alone had the power to act. By far the most important question touches the character of our country, and this involves the justice of the war. The subject itself is a fruitful one, and has been so often examined and exhausted that it requires some moral courage to discuss it even briefly. I shall endeavor to compress my remarks within the narrowest space, confining myself, as much as may be, to propositions rather than to illustrations.

Had we cause of war against Mexico? It has been said, and upon this floor, that to give just cause of war there must be a clear right, coupled with a "sort of necessity," before a resort be had to this extreme necessity. Such general considerations, however, as this, amount to very little in guiding the conduct of nations, as a slight analysis of this principle will show. The honorable Senator himself who advanced it concedes that we had a clear right, and if a "sort of necessity" to enforce it had been coupled with this, we should have stood justified in the eyes of the world had we declared war against Mexico years ago. And what is this "sort of necessity," without which the right is to remain barren? Why, I take it, if thirty years of aggression on the one side and of remonstrance on the other do not constitute this necessity, it would be vain to seek it in any war undertaken in modern times.

The fact is, sir, the question of war is a complicated one, into which considerations of right and expediency enter largely, if not equally. If one nation injures another, and refuses or

unreasonably delays to make satisfaction, this gives to the injured Power just cause of war. But whether she undertake it depends upon her own position, on that of her adversary, on the magnitude of the injury, and, frequently, on other circumstances, political or financial, which it would be useless to specify and impossible to enumerate. Nations must and will judge for themselves under these circumstances, as well as of the right itself, as of a "sort of necessity" there may be of enforcing it. The right once established, and that the gentleman himself concedes in this case, the resort to force is a question rather of discretion than of morals, as it is a remedy consequent upon the violation of national rights. It is too late to tell us, sir, that we had no just cause of war. Successive administrations of the government and the voice of the American people have pronounced an irrevocable judgment upon that question.

Our complaints against Mexico commenced nearly with the commencement of her independence. They go back to the year 1817, and come down to the present day in almost one uninterrupted series of outrages. I shall not state them *seriatim*, nor enter into the detail of their nature and extent. This has been repeatedly done, and the official documents are before the country. I will merely classify, from an able report made by Mr. Forsyth in 1817, the various heads of complaints, which will present the general aspect of the subject:

1. Treasure belonging to citizens of the United States has been seized by Mexican officers, in its transit from the capital to the coast.
2. Vessels of the United States have been captured, detained, and condemned upon the most frivolous pretext.
3. Duties have been exacted from others, notoriously against the law, or without law.
4. Other vessels have been employed, and in some instances ruined, in the Mexican service, without compensation to the owners.
5. Citizens of the United States have been imprisoned for long periods of time, without being informed of the offenses with which they were charged.
6. Other citizens have been murdered and robbed by Mexican officers on the high seas, without any attempt to bring the guilty to justice.

I do not intend, Mr. President, to be led into the discussion of any polemic respecting the wickedness of war. I leave that to the schools and debating societies. I am content, and if not, I am compelled, to take things as they are, as they have been, and as they will be. Sent here as practical men, to deal with the interests of our country, we must not be diverted from the true path marked out by the experience and usages of the world, by crude speculations and misplaced philanthropy. We were aggrieved and injured, and could obtain no redress; and we were entitled to take our remedy into our own hands in order to obtain that justice which was pertinaciously withheld from us. The most superficial reader of modern history, the most casual observer of passing events, must know that outrages far less flagrant in their character than those committed by Mexico against us have occasioned half the wars of modern times.

But, sir, I am well aware that these considerations apply only to our just right to declare war against Mexico at any time within the last twenty years. We did not commit the offensive. Mexico herself struck the first stroke, and why? Because Texas was annexed to the United States. I recollect the gentleman on the other side of the chamber thought there was some fluttering in our ranks when this avowal was first made. But there was none whatsoever, sir. We concede the proposition in its fullest extent, that this annexation was the cause of war.

As to the internal question relating to the conduct of the President, it admits of but one answer. That cases may occur in which it is his duty, under his constitutional power, to repel an actual or threatened invasion before Congress can act upon the subject, no one can doubt, and for myself, I could never see any just constitutional or legal objections to the course he pursued in this whole affair. But there is one other consideration which is decisive, and that is, that the orders for the movement of the troops to the Rio Grande were given by the President on the 13th of January, 1846, and thirteen days before that, an act of Congress had been passed recognizing our jurisdiction

west of the Nueces. It was the duty of the Executive to carry it into effect, and thus consider the boundary of Texas as extended beyond that river.

As the "initiative" was taken by our adversary, we took the defensive, and, the attack being inevitable, it was for us to choose where to receive it. Such, I repeat, is the law of nations, and such the practice of nations.

So much for the commencement of the war.

And now for the future. What are we to do? We are to do just what other nations always have done, and always will do, in circumstances similar to our own. We have to prosecute the war vigorously, efficiently, promptly, till the Mexican people are satisfied of their inability to resist us, and are disposed to make a reasonable peace. There is a point, sir, in military operations, and we must reach that point if necessary, where pertinacious obstinacy will be overcome, and where, as I have already said, submission is cheaper than resistance. I think I heard it said, sir, upon this floor, that we had got the victim down, and he was exhausted and spiritless, and that we were preparing to plunge a bowie knife into his heart. This language is in bad taste, sir, and the allusion, it seems to me, wholly unfounded. We have got no prostrate victim, and are preparing for no assassination. We are fighting the Mexicans and they are fighting us, or, at any rate, claim to be fighting us, and refuse all the offers we make to treat with them. They compel us either to close the war dishonorably or to prosecute it inexorably. It is objected here and elsewhere, as a practical difficulty, that there is no government to negotiate. But this is not so, sir; the difficulty lies beyond the government. There are acknowledged rulers with authority enough to treat, were they disposed to do so, as the recent result has shown. And why have they not been so before? Because the public, so far as there is one, is adverse to the measure. The honorable Senator from Mississippi, with his knowledge of the Mexican character, has made known to us one characteristic trait, which explains

the infatuation that prevails in that country; and that is, an overweening vanity — a settled conviction of their superiority to us — and a proneness to attribute their reverses to anything rather than their own imbecility. So much for the masses. The more profound portions of society may well study the doctrine of chances, and looking to the divisions which prevail in our councils, and to the opposition which the legislative measures of the war encounter, may flatter themselves that our exertions will become relaxed, and the Executive unable to prosecute any further operations.

And now for the objects of the war. This subject has occupied much of the attention of the Senate; "indemnity and security" have been bandied about, as though they were mysterious words employed to conceal some great project, or magical words intended to obtain some great end, darkly shadowed forth—a kind of "open sesame!" enabling political necromancers to conceal their work of iniquity and deception. I am not going over this ground again, sir. I have only to say, that there is a single word which fully expresses my views upon this subject, and that word is *acquisition*. The object of the war is an honorable peace, and that peace can best be obtained by an adequate compensation for the injuries done us by Mexico, and that compensation must be made in territory, as it can be made in nothing else. There is one consideration, Mr. President, in all this question of territorial compensation, which has great weight with me. While I trust we shall act as fairly by Mexico as her own conduct will permit, I do not conceal from myself that my reluctance to annex portions of that country to ours is much less than it would be were I not convinced that the permanent happiness of the people would be promoted by the measure. I believe it the happiest fate that could befall them; and I believe that this war, injurious in many respects as it may have been, and must have been, is destined to work a great good for the Mexican people. I believe it will ameliorate their condition, civil, religious, social, and political.

I believe that the contact with our people will bring many advantages permanently beneficial. The country will be laid open to the world, and the intellectual lessons of Europe and America will elevate a depressed population, and bring them to a knowledge of their rights, and of the means of enforcing them.

Man cannot fathom the designs of Providence; but experience teaches us that great political changes are among the means employed in the moral government of the world, and that they often come to renovate decrepit nations, and to give new vigor to the human faculties. The existing race in Mexico has proved itself ignorant, feeble, and, if not retrograding, stationary. Another career may be open to them; the abuses of generations may be swept away, and the route of our armies may become avenues of communication by which light and knowledge may spread over Mexico, and the past remembered only to make the blessings of the change more evident and acceptable. I repeat, sir, that the claim we set up is for compensation for injury, and yet we are gravely reproached in the American Senate, in this middle of the nineteenth century, with the adoption of barbarous principles, as well as barbarous usages, because, in a state of war, when the appeal is to arms, and when the decision rests on strength and not on reason, we measure our own demands by our own sense of justice, and claim what we think right, and intend to take what we claim.

And what other rule, sir, is there, or can there be, for the conduct of nations, than the rule of the strongest, where all pacific means of procuring justice have been tried and found wanting? They have no common umpire, and when they commit their cause to the battlefield, they do so with a full knowledge of the consequences. Security and indemnity, if victorious — cessions and concessions, if vanquished; and all this, harsh as it may appear, has much good sense in its favor, as, indeed, has almost every general rule which the experience of the world has adopted. Man is naturally as pugnacious as his cotenants

Of the earth, whether walking on two legs or on four. He is kept in restraint by the institutions of society, and by the salutary operations of law. But nations are independent; they acknowledge no superior, and much that restrains them, — not all, indeed, for the opinion of the world is something, and the moral principle something more, — but the greatest restraint which keeps them from perpetual collisions is the certain injury and the uncertain issues of war. The race is not always to the swift, nor the battle to the strong. So says the book of inspiration. Numbers do not insure victory, nor power always command success. So says the book of human experience. And this uncertainty is a salutary check upon the ever active promptings of ambition. But divest war of its legitimate consequences, which have belonged to it from the earliest periods of history, establish the principles which this new kind of sickly magnanimity seeks to lay down, that there is to be neither security nor indemnity, or that the conquered, and not the conquering power, is to be the judge of both, and where are we? Where would be the peace of the world, or where the discharge of national obligations, if there were no penalty for injustice, and none of the motives to do right which spring from the fear of the consequences of doing wrong?

We are also told, as a dissuasive against the prosecution of this war, that we can raise no more men nor money, and that our exertions must expire from the very lassitude of our patriotism. Our fathers had these difficulties to contend with in the war of the Revolution, magnified, indeed, a thousand-fold by the circumstances and the nature of the contest, and yet they fought on, till they obtained peace for themselves, and freedom for us, and founded upon a rock — the rock, I hope, of ages — this magnificent republican empire. We heard all this, also, in 1812, and yet, in the face of it, we conducted that war to a glorious termination. We heard it all again at the commencement of this very war, and the time has already passed, according to the prediction of a statesman now present

of the highest character, supported almost by mathematical calculations, when we were to have neither men nor money, and when our cause was to fail from the failure of all the means necessary to support it. Now, sir, nothing can be worse than to stop without attaining our object. If we cannot raise men, 5 and cannot raise money, why, then, we must stop. But, thank God, we have not got to that point yet, nor do I believe we ever shall get to it. Let us not halt in our course now, simply for the fear that we may be compelled to halt there some time or other. Sufficient unto the day is the evil thereof. Sufficient for the 10 dishonor of this country will be the time when she will practically exhibit her inability to maintain her rights and her honor. *Hinc illæ lachrymæ!* Tears for taxes, but none for wounded honor! I trust that I shall never live to see the day when the American people will prosecute an unjust war because they do 15 not feel its burden, or abandon a just one because they feel or fear its financial pressure.

Mr. President, a few remarks upon another topic, and I will cease to trespass upon the indulgence of the Senate.

It has been said in England and in the United States, and 20 perhaps in Mexico, though not so bitterly, I think, that our armies in that country have committed terrible cruelties, unworthy of us and the age, and which should call upon us the condemnation of the world. And the great Journal of England, the proclaimer of English moderation and philanthropy, has 25 said that —

The cruelties perpetrated by Hernando Cortez, on his first expedition to Mexico, have been surpassed in barbarity and heartlessness by the heroic commanders of the model Republic. If despotism can be symbolized by a knout, American republicanism may be represented by a gallows, and from 30 the same spirit of historic heraldry which would indicate French republicanism by a guillotine.

I wish I could give the date of this article, for I should like to fix its exact chronology; but I cannot, as I cut it out of one of the American papers, and have since lost the reference. 35

No man who has the slightest knowledge of the American character can believe that such atrocities have ever been committed by our troops. Where are the burning cities behind us? The desert country before us, abandoned at our approach? The devastation and oppression around us, marking at the same time our power and our cruelty? We can say it in a spirit of truth, and not of national vanity, that such scenes have no place where our armies march. Though my convictions on this subject are as strong as convictions can well be, yet I have not hesitated to fortify them with all the information I could procure here. I have inquired of many gallant officers who have visited us, what has been the conduct of our troops in Mexico, and I have received but one answer, and that expressed in the strongest terms, that no men could have behaved better under the circumstances in which they were placed. Such is the testimony of General Quitman, of General Shields, of General Pierce, of Colonel Harney, Colonel Garland, Colonel Morgan, Colonel Moore, and others. I name these names because they are known to the whole country, and those who bear them have also borne distinguished parts in our operations in Mexico, and have been in the best situation to ascertain the truth. They have authorized me thus publicly to appeal to their testimony, and I believe I understood from all of them that they were not aware of an instance of private assassination by an American soldier in Mexico. Offenses against persons are almost unknown, and the Mexicans themselves find and acknowledge this foreign armed government better and more equal than their own which it has replaced.

A Mexican horseman rides over the battlefield, thrusting his lance through the helpless wounded, gleaning with savage ferocity in the harvest where the Great Reaper himself had passed and spared; while the American soldier, in the same scene of carnage, stoops down, and, raising his prostrate foe, pours the contents of his canteen into his parched lips and recalls his fainting spirit to bless the generous enemy. This

picture is at the same time a bright and a dark one, but it marks both now and forever, the characteristics of the two armies, and I commend it to all who doubt the humanity of the American soldier, or the cruelty of the Mexican.

QUESTIONS FOR ANALYSIS

1. *The Speech of Mr. Calhoun*

197. Compare the beginning with that of the former speeches. Try to account for the differences.

For the political situation out of which this debate grew, see Wilson, *Division and Reunion*, p. 43.

199, line 3, to **200**, line 10. Has the speaker made effective argument out of these statistics?

197-200. Has a special issue been presented? If so, state clearly and concisely.

200, lines 34 ff. "I have assigned fully—" What kind of argument in this paragraph?

202, 7 ff. "But, it may be asked—" Does this show prudence on the part of the speaker?

203, 17 ff. "Now, I hold—" What argumentative elements in this paragraph? There is something outside of argument inserted here. What is it? Why forcible?

204, 5 ff. "But to return—" What kind of argument is this paragraph? State in typical form.

204, 24-28. This is called the "elastic clause of the Constitution." Test the argument by the wording of the clause.

205, 25-27. This argument is in the form of a question. Is it forcible? Why? What is the basis of such argument?

205, 28 ff. "But if it be a fact—" What kind of argument here? Test the validity.

What is the speaker's purpose in this exaggeration?

207, 21-22. "Is it not strange that with all this evidence—" What kind of evidence is it?

207, 28 ff. Note carefully the use of questions and answers here. What is the value of such a method?

209, 7 ff. "The danger is imminent —" Test the soundness of this argument.

What gives this speech unity?

What is the argumentative value of the final paragraph?

Has the audience influenced the style? the kind of arguments used? Is it a "popular address"?

2. *The Speech of Mr. Cass*

211. Study this as a splendid example of introduction.

211, 25 ff. "The Senator says —" Has the speaker's mind retained the first point of Calhoun's speech? Is Calhoun fairly interpreted? Is the refutation competent?

212, 24 ff. "The Senator says, also, —" What kind of argument?

214, 7 ff. "But, in the second place —" What kind of argument?

214, 21 ff. Compare the corresponding passage from Calhoun's speech — (a) as to kind of evidence, (b) as to manner of expression, (c) as to convincingness.

215, 25. "My confidence —" What is the appeal here?

216, 8. "He supported his views then and now with that force —" Has Cass made argumentative material out of this tribute to his opponent?

216, 17-22. "The force required —" What kind of evidence? What kind of argument?

216, 23 ff. What is the argumentative value of sarcasm?

218, 7 ff. Compare this argument with the corresponding passage in Calhoun's speech. Is it treated fairly? Which is the stronger?

219, 2. "Fundamental error." Compare this passage and the corresponding passage in Calhoun's speech with Art. IV. sec. 3 of the Constitution. Discuss these two positions.

220, 21-24. What argumentative value has this quotation from the Bible?

221, 30. "And if our sovereign —" Has the speaker refuted Calhoun's argument?

223, 13 ff. Condense this argument into syllogistic form.

226, 35 ff. Is this discussion a digression from the resolution?

228, 25 ff. Quotation. What kind of evidence? Is it proof?

229, 11 ff. "The most superficial reader —" Is this good argument?

230, 9 ff. What means is used to prejudice the audience?

231, 11 ff. What is the attitude of the speaker in this argument? Is the position tenable?

232, 26 ff. "And what other rule —" Test the soundness of the principles asserted.

Study this passage for style and argument. Is it a digression?

233, 13 ff. What argumentative use is made of the questions?

234, 20 ff. Test the convincingness of the testimonial evidence.

What are the special issues in this discussion?

Compare the methods of argument.

Study the carefulness of proof.

IV. LINCOLN-DOUGLAS JOINT DEBATE AT ALTON

LINCOLN-DOUGLAS JOINT DEBATE AT ALTON

The importance of the seven joint debates between Stephen A. Douglas and Abraham Lincoln need not be emphasized. Their literary merit and their force as arguments have long since been established, and their effect, not only upon the senatorial campaign in which they were made, but also upon the slavery issue and the presidential campaign of 1860, is too well known to need re-statement.

The debate at Alton, October 15, 1858, was the last of the series, and is, for this reason, a complete summary of the argument and a concise statement of the points in issue. In it the two great speakers met for their final encounter, when each knew the line of argument which the other would pursue, and when each was ready to meet that argument with his best material and reasoning.

It is unnecessary, even if space permitted, to review the historical events involved or to discuss the issues. The histories of the period and the biographies of the two men are available to all and may be consulted.

SENATOR DOUGLAS'S SPEECH

(At Alton, October 15, 1858.)

LADIES AND GENTLEMEN: It is now nearly four months since the canvass between Mr. Lincoln and myself commenced. On the 16th of June the Republican Convention assembled at Springfield and nominated Mr. Lincoln as their candidate for the United States Senate, and he, on that occasion, delivered 5 a speech in which he laid down what he understood to be the Republican creed and the platform on which he proposed to stand during the contest. The principal points in that speech of Mr. Lincoln's were: First, that this government could not endure permanently divided into free and slave states, as 10 our fathers made it; that they must all become free or all become slave; all become one thing, or all become the other, — otherwise this Union could not continue to exist. I give you his opinions almost in the identical language he used. His second proposition was a crusade against the Supreme Court of the 15 United States because of the Dred Scott decision, urging as an especial reason for his opposition to that decision that it deprived the negroes of the rights and benefits of that clause in the Constitution of the United States which guarantees to the citizens of each state all the rights, privileges, and immunities of the 20 citizens of the several states. On the 10th of July I returned home, and delivered a speech to the people of Chicago, in which I announced it to be my purpose to appeal to the people of Illinois to sustain the course I had pursued in Congress. In that speech I joined issue with Mr. Lincoln on the points which he had 25 presented. Thus there was an issue clear and distinct made up between us on these two propositions laid down in the speech of Mr. Lincoln at Springfield, and controverted by me in my reply to him at Chicago.

On the next day, the 11th of July, Mr. Lincoln replied to 30

me at Chicago, explaining at some length and reaffirming the positions which he had taken in his Springfield speech. In that Chicago speech he even went further than he had before, and uttered sentiments in regard to the negro being on an equality with the white man. He adopted in support of this position the argument which Lovejoy and Coddington and other Abolition lecturers had made familiar in the northern and central portions of the state; to wit, that the Declaration of Independence having declared all men free and equal by divine law, also that negro equality was an inalienable right, of which they could not be deprived. He insisted, in that speech, that the Declaration of Independence included the negro in the clause asserting that all men were created equal, and went so far as to say that if one man was allowed to take the position that it did not include the negro, others might take the position that it did not include other men. He said that all these distinctions between this man and that man, this race and the other race, must be discarded, and we must all stand by the Declaration of Independence, declaring that all men were created equal.

The issue thus being made up between Mr. Lincoln and myself on three points, we went before the people of the state. During the following seven weeks, between the Chicago speeches and our first meeting at Ottawa, he and I addressed large assemblages of the people in many of the central counties. In my speeches I confined myself closely to those three positions which he had taken, controverting his proposition that this Union could not exist as our fathers made it, divided into free and slave states, controverting his proposition of a crusade against the Supreme Court because of the Dred Scott decision, and controverting his proposition that the Declaration of Independence included and meant the negroes as well as the white men when it declared all men to be created equal. I supposed at that time that these propositions constituted a distinct issue between us, and that the opposite positions

we had taken upon them we would be willing to be held to in every part of the state. I never intended to waver one hair's breadth from that issue either in the north or the south, or wherever I should address the people of Illinois. I hold that when the time arrives that I cannot proclaim my political 5 creed in the same terms, not only in the northern, but in the southern part of Illinois, not only in the Northern, but in the Southern states, and wherever the American flag waves over American soil, that then there must be something wrong in that creed. So long as we live under a common Constitution, 10 so long as we live in a confederacy of sovereign and equal states, joined together as one for certain purposes, any political creed is radically wrong which cannot be proclaimed in every state and every section of that Union, alike.

I took up Mr. Lincoln's three propositions in my several 15 speeches, analyzed them, and pointed out what I believed to be the radical errors contained in them. First, in regard to his doctrine that this government was in violation of the law of God, which says that a house divided against itself cannot stand, I repudiated it as a slander upon the immortal framers of our 20 Constitution. I then said, I have often repeated, and now again assert, that in my opinion our government can endure forever, divided into free and slave states as our fathers made it,—each state having the right to prohibit, abolish, or sustain slavery, just as it pleases. This government was 25 made upon the great basis of the sovereignty of the states, the right of each state to regulate its own domestic institutions to suit itself, and that right was conferred with the understanding and expectation that inasmuch as each locality had separate interests, each locality must have different and dis- 30 tinct local and domestic institutions, corresponding to its wants and interests. Our fathers knew, when they made the government, that the laws and institutions which were well adapted to the Green Mountains of Vermont, were unsuited to the rice plantations of South Carolina. They knew then, 35

as well as we know now, that the laws and institutions which would be well-adapted to the beautiful prairies of Illinois would not be suited to the mining regions of California. They knew that in a Republic as broad as this, having such a variety of soil, climate, and interest, there must necessarily be a corresponding variety of local laws — the policy and institutions of each state adapted to its condition and wants. For this reason this Union was established on the right of each state to do as it pleased on the question of slavery, and every other question; and the various states were not allowed to complain of, much less interfere with, the policy of their neighbors.

Suppose the doctrine advocated by Mr. Lincoln and the Abolitionists of this day had prevailed when the Constitution was made, what would have been the result? Imagine for a moment that Mr. Lincoln had been a member of the Convention that framed the Constitution of the United States, and that, when its members were about to sign that wonderful document, he had arisen in that Convention as he did at Springfield this summer, and addressing himself to the President had said, "A house divided against itself cannot stand; this government, divided into free and slave states, cannot endure; they must all be free or all be slave; they must all be one thing, or all the other — otherwise, it is a violation of the law of God, and cannot continue to exist:"— suppose Mr. Lincoln had convinced that body of sages that that doctrine was sound, what would have been the result? Remember that the Union was then composed of thirteen states, twelve of which were slaveholding and one free. Do you think that the one free state would have outvoted the twelve slaveholding states, and thus have secured the abolition of slavery? On the other hand, would not the twelve slaveholding states have outvoted the one free state, and thus have fastened slavery, by a constitutional provision, on every foot of the American Republic forever? You see that if this Abolition doctrine of Mr. Lincoln had prevailed when the government was made, it would have established slavery as a

permanent institution in all the states, whether they wanted it or not; and the question for us to determine in Illinois now, as one of the free states, is whether or not we are willing, having become the majority section, to enforce a doctrine on the minority which we would have resisted with our heart's blood 5 had it been attempted on us when we were in a minority.

How has the South lost her power as the majority section in this Union, and how have the free states gained it, except under the operation of that principle which declares the right of the people of each state and each territory to form and regulate their 10 domestic institutions in their own way? It was under that principle that slavery was abolished in New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania; it was under that principle that one-half of the slaveholding states became free; it was under that principle that the number 15 of free states increased, until, from being one out of twelve states, we have grown to be the majority of states of the whole Union, with the power to control the House of Representatives and Senate, and the power, consequently, to elect a President by Northern votes without the aid of a Southern state. Having 20 obtained this power under the operation of that great principle, are you now prepared to abandon the principle and declare that merely because we have the power you will wage a war against the Southern states and their institutions until you force them to abolish slavery everywhere? 25

After having pressed these arguments home on Mr. Lincoln for seven weeks, publishing a number of my speeches, we met at Ottawa in joint discussion, and he then began to crawfish a little and let himself down. I there propounded certain questions to him. Amongst others, I asked him whether he would vote 30 for the admission of any more slave states, in the event the people wanted them. He would not answer. I then told him that if he did not answer the question there, I would renew it at Freeport, and would then trot him down into Egypt, and again put it to him. Well, at Freeport, knowing that the next joint 35

discussion took place in Egypt, and being in dread of it, he did answer my question in regard to no more slave states, in a mode which he hoped would be satisfactory to me, and accomplish the object he had in view. I will show you what his answer was. After saying that he was not pledged to the Republican doctrine of "no more slave states," he declared:

I state to you freely, frankly, that I should be exceedingly sorry to ever be put in the position of having to pass upon that question. I should be exceedingly glad to know that there never would be another slave state admitted into this Union.

Here permit me to remark, that I do not think the people will ever force him into a position against his will. He went on to say:

But I must add, in regard to this, that if slavery shall be kept out of the territory during the territorial existence of any one given territory, and then the people should, having a fair chance and a clear field, when they come to adopt a constitution, if they should do the extraordinary thing of adopting a slave constitution, uninfluenced by the actual presence of the institution among them, I see no alternative, if we own the country, but we must admit it into the Union.

That answer, Mr. Lincoln supposed, would satisfy the Old Line Whigs, composed of Kentuckians and Virginians, down in the southern part of the state. Now, what does it amount to? I desired to know whether he would vote to allow Kansas to come into the Union with slavery or not, as her people desired. He would not answer, but in a roundabout way said that if slavery should be kept out of a territory during the whole of its territorial existence, and then the people, when they adopted a state constitution, asked admission as a slave state, he supposed he would have to let the state come in. The case I put to him was an entirely different one. I desired to know whether he would vote to admit a state if Congress had not prohibited slavery in it during its territorial existence, as Congress never pretended to do, under Clay's Compromise measures of 1850. He would not answer, and I have not yet been able to get an

answer from him. I have asked him whether he would vote to admit Nebraska if her people asked to come in as a state with a constitution recognizing slavery, and he refused to answer. I have put the question to him with reference to New Mexico, and he has not uttered a word in answer. I have enumerated 5 the territories, one after another, putting the same question to him with reference to each, and he has not said, and will not say, whether, if elected to Congress, he will vote to admit any territory now in existence with such a constitution as her people may adopt. He invents a case which does not exist, and cannot 10 exist under this government, and answers it; but he will not answer the question I put to him in connection with any of the territories now in existence. The contract we entered into with Texas when she entered the Union, obliges us to allow four states to be formed out of the old state, and admitted with or 15 without slavery, as the respective inhabitants of each may determine. I have asked Mr. Lincoln three times in our joint discussions whether he would vote to redeem that pledge, and he has never yet answered. He is as silent as the grave on the subject. He would rather answer as to a state of the case which 20 will never arise than commit himself by telling what he would do in a case which would come up for his action soon after his election to Congress. Why can he not say whether he is willing to allow the people of each state to have slavery or not as they please, and to come into the Union, when they have the requisite 25 population, as a slave or a free state, as they decide? I have no trouble in answering the question. I have said everywhere, and now repeat it to you, that if the people of Kansas want a slave state they have a right, under the Constitution of the United States, to form such a state, and I will let them come 30 into the Union with slavery or without, as they determine. If the people of any other territory desire slavery, let them have it. If they do not want it, let them prohibit it. It is their business, not mine. It is none of our business in Illinois whether Kansas is a free state or a slave state. It is none of your 35

business in Missouri whether Kansas shall adopt slavery or reject it. It is the business of her people, and none of yours. The people of Kansas have as much right to decide that question for themselves as you have in Missouri to decide it for yourselves, or we in Illinois to decide it for ourselves. 9

And here I may repeat what I have said in every speech I have made in Illinois, that I fought the Lecompton constitution to its death, not because of the slavery clause in it, but because it was not the act and deed of the people of Kansas. I said then in Congress, and I say now, that if the people of Kansas 10 want a slave state, they have a right to have it. If they wanted the Lecompton constitution, they had a right to have it. I was opposed to that constitution because I did not believe that it was the act and deed of the people, but on the contrary, the act of a small, pitiful minority acting in the name of the majority. 15 When at last it was determined to send that constitution back to the people, and accordingly, in August last, the question of admission under it was submitted to a popular vote, the citizens rejected it by nearly ten to one, thus showing conclusively that I was right when I said that the Lecompton constitution was 20 not the act and deed of the people of Kansas, and did not embody their will.

I hold that there is no power on earth, under our system of government, which has the right to force a constitution upon an unwilling people. Suppose that there had been a majority of 25 ten to one in favor of slavery in Kansas, and suppose there had been an Abolition President and an Abolition Administration, and by some means the Abolitionists succeeded in forcing an Abolition constitution on those slaveholding people, would the people of the South have submitted to that act for one instant? 30 Well, if you of the South would not have submitted to it a day, how can you, as fair, honorable, and honest men, insist on putting a slave constitution on a people who desire a free state? Your safety and ours depends upon both of us acting in good faith, and living up to that great principle which asserts the 35

right of every people to form and regulate their domestic institutions to suit themselves, subject only to the Constitution of the United States.

Most of the men who denounced my course on the Lecompton question objected to it not because I was not right, but because they thought it expedient at that time, for the sake of keeping the party together, to do wrong. I never knew the Democratic party to violate any one of its principles out of policy or expediency, that it did not pay the debt with sorrow. There is no safety or success for our party unless we always do right, and trust the consequences to God and the people. I chose not to depart from principle for the sake of expediency on the Lecompton question, and I never intend to do it on that or any other question.

But I am told that I would have been all right if I had only voted for the English bill after the Lecompton was killed. You know a general pardon was granted to all political offenders on the Lecompton question, provided they would only vote for the English bill. I did not accept the benefits of that pardon for the reason that I had been right in the course I had pursued, and hence did not require any forgiveness. Let us see how the result has been worked out. English brought in his bill referring the Lecompton constitution back to the people, with the provision that if it was rejected Kansas should be kept out of the Union until she had the full ratio of population required for a member of Congress, thus in effect declaring that if the people of Kansas would only consent to come into the Union under the Lecompton constitution, and have a slave state when they did not want it, they should be admitted with a population of 35,000; but that if they were so obstinate as to insist upon having just such a constitution as they thought best, and to desire admission as a free state, then they should be kept out until they had 93,420 inhabitants. I then said, and I now repeat to you, that whenever Kansas has people enough for a slave state she has people enough for a free state. I was and am willing to adopt the

rule that no state shall ever come into the Union until she has the full ratio of population for a member of Congress, provided that rule is made uniform. I made that proposition in the Senate last winter, but a majority of the Senators would not agree to it; and I then said to them, If you will not adopt the general rule I will not consent to make an exception of Kansas.

I hold that it is a violation of the fundamental principles of this government to throw the weight of federal power into the scale, either in favor of the free or the slave states. Equality among all the states of this Union is a fundamental principle in our political system. We have no more right to throw the weight of the federal government into the scale in favor of the slaveholding than the free states, and last of all should our friends in the South consent for a moment that Congress should withhold its powers either way when they know that there is a majority against them in both houses of Congress.

Fellow citizens, how have the supporters of the English bill stood up to their pledges not to admit Kansas until she obtained a population of 93,420, in the event she rejected the Lecompton constitution? How? The newspapers inform us that English himself, whilst conducting his canvass for re-election, and in order to secure it, pledged himself to his constituents that if returned he would disregard his own bill and vote to admit Kansas into the Union with such population as she might have when she made application. We are informed that every Democratic candidate for Congress, in all the states where elections have recently been held, was pledged against the English bill, with perhaps one or two exceptions. Now, if I had only done as these anti-Lecompton men who voted for the English bill in Congress, pledging themselves to refuse to admit Kansas if she refused to become a slave state, until she had a population of 93,420, and then returned to their people, forfeited their pledge, and made a new pledge to admit Kansas at any time she applied, without regard to population, I would have had no trouble. You saw the whole power and patronage of the federal govern-

ment wielded in Indiana, Ohio, and Pennsylvania to re-elect anti-Lecompton men to Congress who voted against Lecompton, then voted for the English bill, and then denounced the English bill, and pledged themselves to their people to disregard it. My sin consists in not having given a pledge, and then in not 5 having afterward forfeited it. For that reason, in this state, every postmaster, every route agent, every collector of the ports, and every federal officeholder, forfeits his head the moment he expresses a preference for the Democratic candidates against Lincoln and his Abolition associates. A Democratic Adminis- 10 tration, which we helped to bring into power, deems it consistent with its fidelity to principle and its regard to duty, to wield its power in this state in behalf of the Republican Abolition candidates in every county and every Congressional District against the Democratic party. All I have to say in reference to the 15 matter is, that if that Administration have not regard enough for principle, if they are not sufficiently attached to the creed of the Democratic party to bury forever their personal hostilities in order to succeed in carrying out our glorious principles, I have. I have no personal difficulty with Mr. Buchanan or his Cabinet. 20 He chose to make certain recommendations to Congress, as he had a right to do, on the Lecompton question. I could not vote in favor of them. I had as much right to judge for myself how I should vote as he had how he should recommend. He undertook to say to me, "If you do not vote as I tell you, I will 25 take off the heads of your friends." I replied to him: "You did not elect me. I represent Illinois, and I am accountable to Illinois as my constituency, and to God, but not to the President or to any other power on earth."

And now this warfare is made on me because I would not 30 surrender my regard for duty, because I would not abandon my constituency and receive the orders of the Executive authorities how I should vote in the Senate of the United States. I hold that an attempt to control the Senate, on the part of the Executive, is subversive of the principles of our Constitution. 35

The Executive department is independent of the Senate, and the Senate is independent of the President. In matters of legislation the President has a veto on the action of the Senate, and in appointments and treaties the Senate has a veto on the President. He has no more right to tell me how I shall vote on his appointments, than I have to tell him whether he shall veto or approve a bill that the Senate has passed. Whenever you recognize the right of the Executive to say to a Senator, "Do this, or I will take off the heads of your friends," you convert this government from a republic into a despotism. When-
ever you recognize the right of a President to say to a member of Congress, "Vote as I tell you, or I will bring a power to bear against you at home which will crush you," you destroy the independence of the representative and convert him into a tool of Executive power. I resisted this invasion of the constitu-
tional rights of a Senator, and I intend to resist it as long as I have a voice to speak or a vote to give. Yet, Mr. Buchanan cannot provoke me to abandon one iota of Democratic principles out of revenge or hostility to his course. I stand by the platform of the Democratic party, and by its organization,
and support its nominees. If there are any who choose to bolt, the fact only shows that they are not as good Democrats as I am.

My friends, there never was a time when it was as important for the Democratic party, for all national men, to rally and stand
together, as it is to-day. We find all sectional men giving up past differences and continuing the one question of slavery, and when we find sectional men thus uniting we should unite to resist them and their treasonable designs. Such was the case in 1850, when Clay left the quiet and peace of his home,
and again entered upon public life, to quell agitation and restore peace to a distracted Union. Then we Democrats, with Cass at our head, welcomed Henry Clay, whom the whole nation regarded as having been preserved by God for the times. He became our leader in that great fight, and we rallied around him

the same as the Whigs rallied around "Old Hickory" in 1832, to put down nullification. Thus you see that whilst Whigs and Democrats fought fearlessly in old times about banks, the tariff, distribution, the specie circular, and the sub-treasury, all united as a band of brothers when the peace, harmony, or integrity of the Union was imperiled. It was so in 1850, when Abolitionism had even so far divided this country, North and South, as to endanger the peace of the Union; Whigs and Democrats united in establishing the Compromise Measures of that year, and restoring tranquillity and good feeling. These measures passed on the joint action of the two parties. They rested on the great principle that the people of each state and each territory should be left perfectly free to form and regulate their domestic institutions to suit themselves. You Whigs and we Democrats justified them in that principle.

In 1854, when it became necessary to organize the territories of Kansas and Nebraska, I brought forward the bill on the same principle. In the Kansas-Nebraska bill you find it declared to be the true intent and meaning of the act not to legislate slavery into any state or territory, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way. I stand on that same platform in 1858 that I did in 1850, 1854, and 1856. The Washington "Union," pretending to be the organ of the Administration, in the number of the 5th of this month, devotes three columns and a half to establish these propositions: first, that Douglas, in his Freeport speech, held the same doctrine that he did in his Nebraska bill in 1854; second, that in 1854 Douglas justified the Nebraska bill upon the ground that it was based upon the same principle as Clay's Compromise Measures of 1850. The "Union" thus proved that Douglas was the same in 1858 that he was in 1856, 1854, and 1850, and consequently argued that he was never a Democrat. Is it not funny that I was never a Democrat? There is no pretense that I have changed a hair's breadth. The "Union" proves by my speeches

that I explained the Compromise Measures of 1850 just as I do now, and that I explained the Kansas and Nebraska bill in 1854 just as I did in my Freeport speech, and yet says that I am not a Democrat, and cannot be trusted, because I have not changed during the whole of that time. It has occurred to me that in 1854 the author of the Kansas and Nebraska bill was considered a pretty good Democrat. It has occurred to me that in 1856, when I was exerting every nerve and every energy for James Buchanan, standing on the same platform then that I do now, that I was a pretty good Democrat. They now tell me that I am not a Democrat, because I assert that the people of a territory, as well as those of a state, have the right to decide for themselves whether slavery can or cannot exist in such territory. Let me read what James Buchanan said on that point when he accepted the Democratic nomination for the Presidency in 1856. In his letter of acceptance, he used the following language:

The recent legislation of Congress respecting domestic slavery, derived as it has been from the original and pure fountain of legitimate political power, the will of the majority, promises ere long to allay the dangerous excitement. This legislation is founded upon principles as ancient as free government itself, and in accordance with them has simply declared that the people of a territory, like those of a state, shall decide for themselves whether slavery shall or shall not exist within their limits.

Dr. Hope will there find my answer to the question he propounded to me before I commenced speaking. Of course no man will consider it an answer who is outside of the Democratic organization, bolts Democratic nominations, and indirectly aids to put Abolitionists into power over Democrats. But whether Dr. Hope considers it an answer or not, every fair-minded man will see that James Buchanan has answered the question, and has asserted that the people of a territory, like those of a state, shall decide for themselves whether slavery shall or shall not exist within their limits. I answer specifically, if you want a further answer, and say that while under the

decision of the Supreme Court, as recorded in the opinion of Chief Justice Taney, slaves are property like all other property, and can be carried into any territory of the United States the same as any other description of property, yet when you get them there they are subject to the local law of the territory 5 just like all other property. You will find in a recent speech delivered by that able and eloquent statesman, Hon. Jefferson Davis, at Bangor, Maine, that he took the same view of this subject that I did in my Freeport speech. He there said:

If the inhabitants of any territory should refuse to enact such laws and 10 police regulations as would give security to their property or to his, it would be rendered more or less valueless in proportion to the difficulties of holding it without such protection. In the case of property in the labor of man, or what is usually called slave property, the insecurity would be so great that the owner could not ordinarily retain it. Therefore, though the right would 15 remain, the remedy being withheld, it would follow that the owner would be practically debarred, by the circumstances of the case, from taking slave property into a territory where the sense of the inhabitants was opposed to its introduction. So much for the oft-repeated fallacy of forcing slavery upon any community. 20

You will also find that the distinguished Speaker of the present House of Representatives, Hon. Jas. L. Orr, construed the Kansas and Nebraska bill in this same way in 1856, and also that great intellect of the South, Alex. H. Stephens, put the same construction upon it in Congress that I did in my 25 Freeport speech.

The whole South are rallying to the support of the doctrine that if the people of a territory want slavery they have a right to have it, and if they do not want it that no power on earth can force it upon them. I hold that there is no prin- 30 ciple on earth more sacred to all the friends of freedom than that which says that no institution, no law, no constitution, should be forced on an unwilling people contrary to their wishes; and I assert that the Kansas and Nebraska bill contains that principle. It is the great principle contained in that bill. It is the 35 principle on which James Buchanan was made President.

Without that principle, he never would have been made President of the United States. I will never violate or abandon that doctrine, if I have to stand alone. I have resisted the blandishments and threats of power on the one side, and seduction on the other, and have stood immovably for that principle, fighting for it when assailed by Northern mobs, or threatened by Southern hostility. I have defended it against the North and the South, and I will defend it against whoever assails it, and I will follow it wherever its logical conclusions lead me. I say to you that there is but one hope, one safety for this country, and that is to stand immovably by that principle which declares the right of each state and each territory to decide these questions for themselves. This government was founded on that principle, and must be administered in the same sense in which it was founded.

But the Abolition party really think that under the Declaration of Independence the negro is equal to the white man, and that negro equality is an inalienable right conferred by the Almighty, and hence that all human laws in violation of it are null and void. With such men it is no use for me to argue. I hold that the signers of the Declaration of Independence had no reference to negroes at all when they declared all men to be created equal. They did not mean negro, nor the savage Indians, nor the Fiji Islanders, nor any other barbarous race. They were speaking of white men. They alluded to men of European birth and European descent, — to white men, and to none others, — when they declared that doctrine. I hold that this government was established on the white basis. It was established by white men for the benefit of white men and their posterity forever, and should be administered by white men, and none others. But it does not follow, by any means, that merely because the negro is not a citizen, and merely because he is not our equal, that, therefore, he should be a slave. On the contrary, it does follow that we ought to extend to the negro race, and to all other dependent races, all the rights, all the privileges, 3

and all the immunities which they can exercise consistently with the safety of society. Humanity requires that we should give them all these privileges; Christianity commands that we should extend those privileges to them.

The question then arises, What are those privileges, and what is the nature and extent of them? My answer is, that that is a question which each state must answer for itself. We in Illinois have decided it for ourselves. We tried slavery, kept it up for twelve years, and, finding that it was not profitable, we abolished it for that reason and became a free state. We adopted in its stead the policy that a negro in this state shall not be a slave and shall not be a citizen. We have a right to adopt that policy. For my part, I think it is a wise and sound policy for us. You in Missouri must judge for yourselves whether it is a wise policy for you. If you choose to follow our example, very good; if you reject it, still well, it is your business, not ours. So with Kentucky. Let Kentucky adopt a policy to suit herself. If we do not like it we will keep away from it, and if she does not like ours let her stay at home, mind her own business, and let us alone. If the people of all the states will act on that great principle, and each state mind its own business, attend to its own affairs, take care of its own negroes and not meddle with its neighbors, then there will be peace between the North and the South, the East and the West, throughout the whole Union.

Why can we not thus have peace? Why should we thus allow a sectional party to agitate this country, to array the North against the South, and convert us into enemies instead of friends, merely that a few ambitious men may ride into power on a sectional hobby? How long is it since these ambitious Northern men wished for a sectional organization? Did any one of them dream of a sectional party as long as the North was the weaker section and the South the stronger? Then all were opposed to sectional parties; but the moment the North obtained the majority in the House and Senate by the admission of California, and could elect a President without the aid

of Southern votes, that moment ambitious Northern men formed a scheme to excite the North against the South, and make the people be governed in their votes by geographical lines, thinking that the North, being the stronger section, would outvote the South, and consequently they, the leaders, would ride into office on a sectional hobby. I am told that the hour is out. It was very short.

MR. LINCOLN'S REPLY

LADIES AND GENTLEMEN: I have been somewhat, in my own mind, complimented by a large portion of Judge Douglas's speech — I mean that portion which he devotes to the controversy between himself and the present Administration. This is the seventh time Judge Douglas and myself have met in these joint discussions, and he has been gradually improving in regard to his war with the Administration. At Quincy, day before yesterday, he was a little more severe upon the Administration than I had heard him upon any occasion, and I took pains to compliment him for it. I then told him to "give it to them with all the power he had"; and as some of them were present, I told them I would be very much obliged if they would *give it to him* in about the same way. I take it he has now vastly improved upon the attack he made then upon the Administration. I flatter myself he has really taken my advice on this subject. All I can say now is to recommend to him and to them what I then commended — to prosecute the war against one another in the most vigorous manner. I say to them again — "Go it, husband! — Go it, bear!"

There is one thing I will mention before I leave this branch of the discussion — although I do not consider it much of my business, anyway. I refer to that part of the Judge's remarks where he undertakes to involve Mr. Buchanan in an inconsistency. He reads something from Mr. Buchanan, from which he undertakes to involve him in an inconsistency; and he gets something of a cheer for having done so. I would only remind the Judge that while he is very valiantly fighting for the Nebraska bill and the repeal of the Missouri Compromise, it has been but a little while since he was the *valiant advocate* of the Missouri Compromise. I want to know if Buchanan has not

as much right to be inconsistent as Douglas had? Has Douglas the *exclusive right*, in this country, of being *on all sides of all questions*? Is nobody allowed that high privilege but himself? Is he to have an entire *monopoly* on that subject?

So far as Judge Douglas addressed his speech to me, or so far as it was about me, it is my business to pay some attention to it. I have heard the Judge state two or three times what he has stated to-day — that in a speech which I made at Springfield, Illinois, I had in a very especial manner complained that the Supreme Court in the Dred Scott case had decided that a negro 10 could never be a citizen of the United States. I have omitted by some accident heretofore to analyze this statement, and it is required of me to notice it now. In point of fact it is *untrue*. I never have complained *especially* of the Dred Scott decision because it held that a negro could not be a citizen, and the 15 Judge is always wrong when he says I ever did so complain of it. I have the speech here, and I will thank him or any of his friends to show where I said that a negro should be a citizen, and complained especially of the Dred Scott decision because it declared he could not be one. I have done no such thing, and Judge 20 Douglas, so persistently insisting that I have done so, has strongly impressed me with the belief of a predetermination on his part to misrepresent me. He could not get his foundation for insisting that I was in favor of this negro equality anywhere else as well as he could by assuming that untrue proposition. 25

Let me tell this audience what is true in regard to that matter; and the means by which they may correct me, if I do not tell them truly, is by a recurrence to the speech itself. I spoke of the Dred Scott decision in my Springfield speech, and I was then endeavoring to prove that the Dred Scott decision was a 30 portion of a system or scheme to make slavery national in this country. I pointed out what things had been decided by the court. I mentioned as a fact that they had decided that a negro could not be a citizen — that they had done so, as I supposed, to deprive the negro, under all circumstances, of the re- 35

motest possibility of ever becoming a citizen and claiming the rights of a citizen of the United States under a certain clause of the Constitution. I stated that without making any complaint of it at all. I then went on and stated the other points decided in the case; namely, that the bringing of a negro into the State of Illinois and holding him in slavery for two years here was a matter in regard to which they would not decide whether it would make him free or not; that they decided the further point that taking him into a United States territory where slavery was prohibited by act of Congress, did not make him free, because that act of Congress, as they held, was unconstitutional. I mentioned these three things as making up the points decided in that case. I mentioned them in a lump, taken in connection with the introduction of the Nebraska bill, and the amendment of Chase, offered at the time, declaratory of the right of the people of the territories to *exclude slavery*, which was voted down by the friends of the bill. I mentioned all these things together, as evidence tending to prove a combination and conspiracy to make the institution of slavery national. In that connection and in that way I mentioned the decision on the point that a negro could not be a citizen, and in no other connection.

Out of this, Judge Douglas builds up his beautiful fabrication of my purpose to introduce a perfect social and political equality between the white and black races. His assertion that I made an "especial objection" (that is his exact language) to the decision on this account, is untrue in point of fact.

Now, while I am upon this subject, and as Henry Clay has been alluded to, I desire to place myself, in connection with Mr. Clay, as nearly right before this people as may be. I am quite aware what the Judge's object is here by all these allusions. He knows that we are before an audience, having strong sympathies southward, by relationship, place of birth, and so on. He desires to place me in an extremely Abolition attitude. He read upon a former occasion, and alludes without reading to-

day, to a portion of a speech which I delivered in Chicago. In his quotations from that speech, as he has made them upon former occasions, the extracts were taken in such a way as, I suppose, brings them within the definition of what is called *garbling* — taking portions of a speech which, when taken by themselves, do not present the entire sense of the speaker as expressed at the time. I propose, therefore, out of that same speech, to show how one portion of it which he skipped over (taking an extract before and an extract after) will give a different idea, and the true idea I intended to convey. It will take some little time to read it, but I believe I will occupy the time that way.

You have heard him frequently allude to my controversy with him in regard to the Declaration of Independence. I confess that I have had a struggle with Judge Douglas on the matter, and I will try briefly to place myself right in regard to it on this occasion. I said — and it is between the extracts Judge Douglas has taken from this speech, and put in his published speeches:

It may be argued that there are certain conditions that make necessities and impose them upon us, and to the extent that a necessity is imposed upon a man he must submit to it. I think that was the condition in which we found ourselves when we established this government. We had slaves among us, we could not get our Constitution unless we permitted them to remain in slavery, we could not secure the good we did secure if we grasped for more; and having by necessity submitted to that much, it does not destroy the principle that is the charter of our liberties. Let the charter remain as our standard.

Now, I have upon all occasions declared as strongly as Judge Douglas against the disposition to interfere with the existing institution of slavery. You hear me read it from the same speech from which he takes garbled extracts for the purpose of proving upon me a disposition to interfere with the institution of slavery, and establish a perfect social and political equality between negroes and white people.

Allow me while upon this subject briefly to present one other extract from a speech of mine, more than a year ago, at Springfield, in discussing this very same question, soon after Judge Douglas took his ground that negroes were not included in the Declaration of Independence:

5

I think the authors of that notable instrument intended to include *all men*, but they did not intend to declare all men equal *in all respects*. They did not mean to say all men were equal in color, size, intellect, moral development, or social capacity. They defined with tolerable distinctness in what they did consider all men created equal — equal in certain inalienable rights, 10 among which are life, liberty, and the pursuit of happiness. This they said, and this they meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, or yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the *right*, so that the 15 *enforcement* of it might follow as fast as circumstances should permit.

They meant to set up a standard maxim for free society which should be familiar to all, constantly looked to, constantly labored for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people, of all colors, everywhere. 20

There again are the sentiments I have expressed in regard to the Declaration of Independence upon a former occasion — sentiments which have been put in print and read wherever anybody cared to know what so humble an individual as myself 25 chose to say in regard to it.

At Galesburg, the other day, I said, in answer to Judge Douglas, that three years ago there never had been a man, so far as I knew or believed, in the whole world, who had said that the Declaration of Independence did not include negroes 30 in the term "all men." I reassert it to-day. I assert that Judge Douglas and all his friends may search the whole records of the country, and it will be a matter of great astonishment to me if they shall be able to find that one human being three years ago had ever uttered the astounding sentiment that the 35 term "all men" in the Declaration did not include the negro. Do not let me be misunderstood. I know that more than

three years ago there were men who, finding this assertion constantly in the way of their schemes to bring about the ascendancy and perpetuation of slavery, *denied the truth of it*. I know that Mr. Calhoun and all the politicians of his school denied the truth of the Declaration. I know that it ran along in the mouth of some Southern men for a period of years, ending at last in that shameful, though rather forcible, declaration of Pettit of Indiana, upon the floor of the United States Senate, that the Declaration of Independence was in that respect "a self-evident lie," rather than a self-evident truth. But I say, with a perfect knowledge of all this hawking at the Declaration without directly attacking it, that three years ago there never had lived a man who had ventured to assail it in the sneaking way of pretending to believe it and then asserting it did not include the negro. I believe the first man who ever said it was Chief Justice Taney in the Dred Scott case, and the next to him was our friend Stephen A. Douglas. And now it has become the catchword of the entire party. I would like to call upon his friends everywhere to consider how they have come in so short a time to view this matter in a way so entirely different from their former belief, to ask whether they are not being borne along by an irresistible current — whither, they know not.

In answer to my proposition at Galesburg last week, I see that some man in Chicago has got up a letter addressed to the Chicago "Times," to show, as he professes, that somebody *had* said so before; and he signs himself "An Old Line Whig," if I remember correctly. In the first place, I would say he *was not* an Old Line Whig. I am somewhat acquainted with Old Line Whigs. I was with the Old Line Whigs from the origin to the end of that party; I became pretty well acquainted with them, and I know they always had some sense, whatever else you could ascribe to them. I know there never was one who had not more sense than to try to show by the evidence he produces that some man had, prior to the time I named, said that negroes

were not included in the term "all men" in the Declaration of Independence. What is the evidence he produces? I will bring forward *his* evidence, and let you see what *he* offers by way of showing that somebody more than three years ago had said negroes were not included in the Declaration. He brings forward part of a speech from Henry Clay — *the* part of *the* speech of Henry Clay which I used to bring forward to prove precisely the contrary. I guess we are surrounded to some extent to-day by the old friends of Mr. Clay, and they will be glad to hear anything from that authority. While he was in Indiana a man presented a petition to liberate his negroes, and he (Mr. Clay) made a speech in answer to it, which I suppose he carefully wrote out himself and caused to be published. I have before me an extract from that speech which constitutes the evidence this pretended "Old Line Whig" at Chicago brought forward to show that Mr. Clay didn't suppose the negro was included in the Declaration of Independence. Hear what Mr. Clay said:

And what is the foundation of this appeal to me in Indiana to liberate the slaves under my care in Kentucky? It is a general declaration in the act announcing to the world the independence of the thirteen American colonies, that all men are created equal. Now, as an abstract principle, *there is no doubt of the truth of that declaration*; and it is desirable, *in the original construction of society and in organized societies*, to keep it in view as a great fundamental principle. But, then, I apprehend that in no society that ever did exist, or ever shall be formed, was or can the equality asserted among the members of the human race be practically enforced and carried out. There are portions, large portions—women, minors, insane, culprits, transient sojourners—that will always remain subject to the government of another portion of the community.

That declaration, whatever may be the extent of its import, was made by the delegations of the thirteen states. In most of them slavery existed, and had long existed, and was established by law. It was introduced and forced upon the colonies by the paramount law of England. Do you believe that in making that declaration the states that concurred in it intended that it should be tortured into a virtual emancipation of all the slaves within their respective limits? Would Virginia and other Southern states have ever united in a declaration which was to be interpreted into an abolition of

slavery among them? Did any one of the thirteen colonies entertain such a design or expectation? To impute such a secret and unavowed purpose would be to charge a political fraud upon the noblest band of patriots that ever assembled in council, a fraud upon the Confederacy of the Revolution, a fraud upon the union of those states whose constitution not only recognized the lawfulness of slavery, but permitted the importation of slaves from Africa until the year 1808.

This is the entire quotation brought forward to prove that somebody previous to three years ago had said the negro was not included in the term "all men" in the Declaration. How does it do so? In what way has it a tendency to prove that? Mr. Clay says *it is true as an abstract principle* that all men are created equal, but that we cannot practically apply it in all cases. He illustrates this by bringing forward the cases of females, minors, and insane persons, with whom it cannot be enforced; but he says it is true as an abstract principle in the organization of society as well as in organized society, and it should be kept in view as a fundamental principle. Let me read a few words more before I add some comments of my own. Mr. Clay says, a little further on:

I desire no concealment of my opinions in regard to the institution of slavery. I look upon it as a great evil, and deeply lament that we have derived it from the parental government and from our ancestors. But here they are, and the question is, How can they be best dealt with? If a state of nature existed, and we were about to lay the foundations of society, *no man would be more strongly opposed than I should be, to incorporate the institution of slavery among its elements.*

Now, here in this same book, in this same speech, in this same extract, brought forward to prove that Mr. Clay held that the negro was not included in the Declaration of Independence, there is no such statement on his part, but the declaration *that it is a great fundamental truth* which should be constantly kept in view in the organization of society and in societies already organized. But if I say a word about it — if I attempt, as Mr. Clay said all good men ought to do, to keep it in view — if, in this "organized society," I ask to have the public eye

turned upon it — if I ask, in relation to the organization of new territories, that the public eye should be turned upon it — forthwith I am vilified as you hear me to-day. What have I done, that I have not the license of Henry Clay's illustrious example here in doing? Have I done aught that I have not his authority for, while maintaining that in organizing new territories and societies this fundamental principle should be regarded, and in organized society holding it up to the public view and recognizing what *he* recognized as the great principle of free government? 5 10

And when this new principle — this new proposition that no human being ever thought of three years ago — is brought forward, *I combat it* as having an evil tendency, if not an evil design. I combat it as having a tendency to dehumanize the negro — to take away from him the right of ever striving to be a man. I combat it as being one of the thousand things constantly done in these days to prepare the public mind to make property, and nothing but property, of the *negro in all the states of this Union*. 15

But there is a point that I wish, before leaving this part of the discussion, to ask attention to. I have read and I repeat the words of Henry Clay: 20

I desire no concealment of my opinions in regard to the institution of slavery. I look upon it as a great evil, and deeply lament that we have derived it from the parental government, and from our ancestors. I wish every slave in the United States was in the country of his ancestors. But here they are; the question is, How can they best be dealt with? If a state of nature existed, and we were about to lay the foundations of society, no man would be more strongly opposed than I should be, to incorporate the institution of slavery among its elements. 25 30

The principle upon which I have insisted in this canvass is in relation to laying the foundations of new societies. I have never sought to apply these principles to the old states for the purpose of abolishing slavery in those states. It is nothing but a miserable perversion of what I *have* said, to assume that I have 35

declared Missouri, or any other slave state, shall emancipate her slaves. I have proposed no such thing. But when Mr. Clay says that in laying the foundations of societies in our territories where it does not exist, he would be opposed to the introduction of slavery as an element, I insist that we have *his warrant*, his license, for insisting upon the exclusion of that element which he declared in such strong and emphatic language *was most hateful to him*.

Judge Douglas has again referred to a Springfield speech in which I said "a house divided against itself cannot stand." The Judge has so often made the entire quotation from that speech that I can make it from memory. I used this language:

We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to the slavery agitation. Under the operation of this policy, that agitation has not only not ceased, but has constantly augmented. In my opinion it will not cease until a crisis shall have been reached and passed. "A house divided against itself cannot stand." I believe this government cannot endure permanently half slave and half free. I do not expect the house to fall — but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the states — old as well as new, North as well as South.

That extract, and the sentiments expressed in it, have been extremely offensive to Judge Douglas. He has warred upon them as Satan wars upon the Bible. His perversions upon it are endless. Here now are my views upon it in brief:

I said we were now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to the slavery agitation. Is it not so? When that Nebraska bill was brought forward four years ago last January, was it not for the "avowed object" of putting an end to the slavery agitation? We were to have no more agitation in Congress; it was all to be banished to the territories. By the way, I will remark here that, as Judge Douglas is very fond of com-

plimenting Mr. Crittenden in these days, Mr. Crittenden has said there was a falsehood in that whole business, for there was *no slavery agitation at that time to allay*. We were for a little while *quiet* on the troublesome thing, and that very allaying plaster of Judge Douglas stirred it up again. But was it not understood or intimated with the "confident promise" of putting an end to the slavery agitation? Surely it was. In every speech you heard Judge Douglas make, until he got into this "imbroglio," as they call it, with the Administration about the Lecompton constitution, every speech on that Nebraska bill was full of his felicitations that we were *just at the end* of the slavery agitation. The last tip of the last joint of the old serpent's tail was just drawing out of view. But has it proved so? I have asserted that under that policy that agitation "has not only not ceased, but has constantly augmented." When was there ever a greater agitation in Congress than last winter? When was it as great in the country as to-day?

There was a collateral object in the introduction of that Nebraska policy, which was to clothe the people of the territories with a superior degree of self-government, beyond what they had ever had before. The first object and the main one, of conferring upon the people a higher degree of "self-government," is a question of fact to be determined by you in answer to a single question. Have you ever heard or known of a people anywhere on earth who had as little to do, as, in the first instance of its use, the people of Kansas had with this same right of "self-government?" In its main policy and in its collateral object, *it has been nothing but a living, creeping lie from the time of its introduction till to-day*.

I have intimated that I thought the agitation would not cease until a crisis should have been reached and passed. I have stated in what way I thought it would be reached and passed. I have said that it might go one way or the other. We might, by arresting the further spread of it, and placing it where the fathers originally placed it, put it where the public

mind should rest in the belief that it was in the course of ultimate extinction. Thus the agitation may cease. It may be pushed forward until it shall become alike lawful in all the states, old as well as new, North as well as South. I have said, and I repeat, my wish is that the further spread of it may be arrested, and that it may be placed where the public mind shall rest in the belief that it is in the course of ultimate extinction. I have expressed that as my wish. I entertain the opinion, upon evidence to my mind, that the fathers of this government placed that institution where the public mind *did* rest in the belief that it was in the course of ultimate extinction. Let me ask why they made provision that the source of slavery — the African slave trade — should be cut off at the end of twenty years? Why did they make provision that, in all the new territory we owned at that time, slavery should be forever inhibited? Why stop its spread in one direction, and cut off its source in another, if they did not look to its being placed in the course of its ultimate extinction?

Again the institution of slavery is only mentioned in the Constitution of the United States two or three times, and in neither of these cases does the word "slavery" or "negro race" occur; but covert language is used each time, and for a purpose full of significance. What is the language in regard to the prohibition of the African slave-trade? It runs in about this way:

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight.

The next allusion in the Constitution to the question of slavery and the black race is on the subject of the basis of representation, and there the language used is:

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed — three-fifths of all other persons.

It says "persons," not slaves, not negroes; but this "three-fifths" can be applied to no other class among us than the negroes.

Lastly, in the provision for the reclamation of fugitive slaves, it is said:

5

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

There again there is no mention of the word "negro" or of 10 slavery. In all three of these places, being the only allusions to slavery in the instrument, covert language is used. Language is used not suggesting that slavery existed or that the black race were among us. And I understand the contemporaneous history of those times to be that covert language was used with a 15 purpose, and that purpose was that in our Constitution, which it was hoped and is still hoped will endure forever, — when it should be read by intelligent and patriotic men, after the institution of slavery had passed from among us, — there should be nothing on the face of the great charter of liberty suggesting 20 that such a thing as negro slavery had ever existed among us. This is part of the evidence that the fathers of the government expected and intended the institution of slavery to come to an end. They expected and intended that it should be in the course of ultimate extinction. And when I say that I desire to 25 see the further spread of it arrested, I only say I desire to see that done which the fathers have first done. When I say I desire to see it placed where the public mind will rest in the belief that it is in the course of ultimate extinction, I only say I desire to see it placed where they placed it. 30

It is not true that our fathers, as Judge Douglas assumes, made this government part slave and part free. Understand the sense in which he puts it. He assumes that slavery is a rightful thing within itself — was introduced by the framers of the Constitution. The exact truth is, that they found the 35

institution existing among us, and they left it as they found it. But in making the government they left this institution with many clear marks of disapprobation upon it. They found slavery among them, and they left it among them because of the difficulty, the absolute impossibility, of its immediate removal. And when Judge Douglas asks me why we cannot let it remain part slave and part free, as the fathers of the government made it, he asks a question based upon an assumption which is itself a falsehood; and I turn upon him and ask him the question, when the policy that the fathers of the government had adopted in relation to this element among us was the best policy in the world, the only wise policy, the only policy that we can ever safely continue upon, that will ever give us peace, unless this dangerous element masters us all and becomes a national institution — *I turn upon him and ask him why he could not leave it alone.* I turn and ask him why he was driven to the necessity of introducing a *new policy* in regard to it. He has himself said he introduced a new policy. He said so in his speech on the 22d of March of the present year, 1858. I ask him why he could not let it remain where our fathers placed it. I ask, too, of Judge Douglas and his friends, why we shall not again place this institution upon the basis on which the fathers left it. I ask you, when he infers that I am in favor of setting the free and slave states at war, when the institution was placed in that attitude by those who made the Constitution, *did they make any war?* If we had no war out of it when thus placed, wherein is the ground of belief that we shall have war out of it if we return to that policy? Have we had any peace upon this matter springing from any other basis? I maintain that we have not. I have proposed nothing more than a return to the policy of the fathers.

I confess, when I propose a certain measure of policy, it is not enough for me that I do not intend anything evil in the result, but it is incumbent on me to show that it has not a *tendency* to that result. I have met Judge Douglas in that

point of view. I have not only made the declaration that I do not *mean* to produce a conflict between the states, but I have tried to show by fair reasoning, and I think I have shown to the minds of fair men, that I propose nothing but what has a most peaceful tendency. The quotation that I happened to 5 make in that Springfield speech, that "a house divided against itself cannot stand," and which has proved so offensive to the Judge, was part and parcel of the same thing. He tries to show that variety in the domestic institutions of the different states is necessary and indispensable. I do not dispute it. I 10 have no controversy with Judge Douglas about that. I shall very readily agree with him that it would be foolish for us to insist upon having a cranberry law here, in Illinois, where we have no cranberries, because they have a cranberry law in Indiana, where they have cranberries. I should insist that it 15 would be exceedingly wrong in us to deny to Virginia the right to enact oyster laws, where they have oysters, because we want no such laws here. I understand, I hope, quite as well as Judge Douglas or anybody else, that the variety in the soil and climate and face of the country, and consequent variety in the 20 industrial pursuits and productions of a country, require systems of law conforming to this variety in the natural features of the country. I understand quite as well as Judge Douglas that if we here raise a barrel of flour more than we want, and the Louisianians raise a barrel of sugar more than they want, 25 it is of mutual advantage to exchange. That produces commerce, brings us together, and makes us better friends. We like one another the more for it. And I understand as well as Judge Douglas, or anybody else, that these mutual accommodations are the cements which bind together the different parts 30 of this Union, — that instead of being a thing to "divide the house," — figuratively expressing the Union — they tend to sustain it; they are the props of the house, tending always to hold it up.

But when I have admitted all this, I ask if there is any par- 35

allel between these things and this institution of slavery? I do not see that there is any parallel at all between them. Consider it. When have we had any difficulty or quarrel amongst ourselves about the cranberry laws of Indiana, or the oyster laws of Virginia, or the pine-lumber laws of Maine, or the fact that Louisiana produces sugar, and Illinois flour? When have we had any quarrels over these things? When have we had perfect peace in regard to this thing which I say is an element of discord in this Union? We have sometimes had peace, but when was it? It was when the institution of slavery remained quiet where it was. We have had difficulty and turmoil whenever it has made a struggle to spread itself where it was not. I ask, then, if experience does not speak in thunder-tones, telling us that the policy which has given peace to the country heretofore, being returned to, gives the greatest promise of peace again. You may say, and Judge Douglas has intimated the same thing, that all this difficulty in regard to the institution of slavery is the mere agitation of office seekers and ambitious Northern politicians. He thinks we want to get "his place," I suppose. I agree that there are office seekers amongst us. The Bible says somewhere that we are desperately selfish. I think we would have discovered that fact without the Bible. I do not claim that I am any less so than the average of men, but I do claim that I am not more selfish than Judge Douglas.

But is it true that all the difficulty and agitation we have in regard to this institution of slavery springs from office-seeking — from the mere ambition of politicians? Is that the truth? How many times have we had danger from this question? Go back to the day of the Missouri Compromise. Go back to the Nullification question, at the bottom of which lay this same slavery question. Go back to the time of the annexation of Texas. Go back to the troubles that led to the Compromise of 1850. You will find that every time, with the single exception of the Nullification question, they sprung

from an endeavor to spread this institution. There never was a party in the history of this country, and there probably never will be, of sufficient strength to disturb the general peace of the country. Parties themselves may be divided and quarrel on minor questions, yet it extends not beyond the parties themselves. But does *not* this question make a disturbance outside of political circles? Does it not enter into the churches and rend them asunder? What divided the great Methodist Church into two parts, North and South? What has raised this constant disturbance in every Presbyterian General Assembly that meets? What disturbed the Unitarian Church in this very city two years ago? What has jarred and shaken the great American Tract Society recently, not yet splitting it, but sure to divide it in the end? Is it not this same mighty, deep-seated power that somehow operates on the minds of men, exciting and stirring them up in every avenue of society — in politics, in religion, in literature, in morals, in all the manifold relations of life? Is this the work of politicians? Is that irresistible power, which for fifty years has shaken the government and agitated the people, to be stilled and subdued by pretending that it is an exceedingly simple thing, and we ought not to talk about it? If you will get everybody else to stop talking about it, I assure you I will quit before they have half done so. But where is the philosophy or statesmanship which assumes that you can quiet that disturbing element in our society which has disturbed us for more than half a century, which has been the only serious danger that has threatened our institutions — I say, where is the philosophy or the statesmanship based on the assumption that we are to quit talking about it, and that the public mind is all at once to cease being agitated by it? Yet this is the policy here in the North that Douglas is advocating — that we are to care nothing about it! I ask you if it is not a false philosophy. Is it not a false statesmanship that undertakes to build up a system of policy upon the basis of caring nothing about *the very thing that everybody does care the most*

about? — a thing which all experience has shown we care a very great deal about?

The Judge alludes very often in the course of his remarks to the exclusive right which the states have to decide the whole thing for themselves. I agree with him very readily that the different states have that right. He is but fighting a man of straw when he assumes that I am contending against the right of the states to do as they please about it. Our controversy with him is in regard to the new territories. We agree that when the states come in as states they have the right and the power to do as they please. We have no power as citizens of the free states, or in our federal capacity as members of the federal Union through the general government, to disturb slavery in the states where it exists. We profess constantly that we have no more inclination than belief in the power of the government to disturb it; yet we are driven constantly to defend ourselves from the assumption that we are warring upon the rights of the *states*. What I insist upon is that the new territories shall be kept free from it while in the territorial condition. Judge Douglas assumes that we have no interest in them — that we have no right whatever to interfere. I think we have some interest. I think that as white men we have. Do we not wish for an outlet for our surplus population, if I may so express myself? Do we not feel an interest in getting to that outlet with such institutions as we would like to have prevail there? If *you* go to the territory opposed to slavery, and another man comes upon the same ground with his slave, upon the assumption that the things are equal, it turns out that he has the equal right all his way, and you have no part of it your way. If he goes in and makes it a slave territory, and by consequence a slave state, is it not time that those who desire to have it a free state were on equal ground? Let me suggest it in a different way. How many Democrats are there about here ["A thousand"] who have left slave states and come into the free state of Illinois to get rid of the institution of slavery?

[Another voice: "A thousand and one."] I reckon there are a thousand and one. I will ask you, if the policy you are now advocating had prevailed when this country was in a territorial condition, where would you have gone to get rid of it? Where would you have found your free state or territory to go to? 5 And when hereafter, for any cause, the people in this place shall desire to find new homes, if they wish to be rid of the institution, where will they find the place to go to?

Now, irrespective of the moral aspect of this question as to whether there is a right or a wrong in enslaving a negro, I am 10 still in favor of our new territories being in such a condition that white men may find a home — where they can settle upon new soil and better their condition in life. I am in favor of this, not merely (I must say it here as I have elsewhere) for our own people who are born amongst us, but as an outlet 15 for *free white people everywhere*, the world over — in which Hans, and Baptiste, and Patrick, and all other men from all the world, may find new homes and better their conditions in life.

I have stated upon former occasions, and I may as well 20 state again, what I understand to be the real issue in this controversy between Judge Douglas and myself. On the point of my wanting to make war between the free and the slave states, there has been no issue between us. So, too, when he assumes that I am in favor of introducing a perfect social and 25 political equality between the white and black races. These are false issues, upon which Judge Douglas has tried to force the controversy. There is no foundation in truth for the charge that I maintain either of these propositions. The real issue in this controversy — the one pressing upon every mind — is the 30 sentiment on the part of one class that looks upon the institution of slavery *as a wrong*, and of another class that *does not* look upon it as a wrong. The sentiment that contemplates the institution of slavery in this country as a wrong is the sentiment of the Republican party. It is the sentiment around 35

which all their actions, all their arguments, circle, and from which all their propositions radiate. They look upon it as being a moral, social, and political wrong; and while they contemplate it as such, they nevertheless have due regard for its actual existence among us, and the difficulties of getting rid 5 of it in any satisfactory way, and to all the constitutional obligations thrown about it. Yet having a due regard for these, they desire a policy in regard to it that looks to its not creating any more danger. They insist that it should, as far as may be, *be treated* as a wrong, and one of the methods of treating it as 10 a wrong is to *make provision that it shall grow no larger*. They also desire a policy that looks to a peaceful end of slavery at some time, as being wrong. These are the views they entertain in regard to it as I understand them; and all their sentiments, all their arguments and propositions, are brought within this 15 range. I have said, and I repeat it here, that if there be a man amongst us who does not think that the institution of slavery is wrong in any one of the aspects of which I have spoken, he is misplaced, and ought not to be with us. And if there be a man amongst us who is so impatient of it as a wrong as 20 to disregard its actual presence among us and the difficulty of getting rid of it suddenly in a satisfactory way, and to disregard the constitutional obligations thrown about it, that man is misplaced if he is on our platform. We disclaim sympathy with him in practical action. He is not placed properly 25 with us.

On this subject of treating it as a wrong, and limiting its spread, let me say a word. Has anything ever threatened the existence of this Union save and except this very institution of slavery? What is it that we hold most dear amongst us? 30 Our own liberty and prosperity. What has ever threatened our liberty and prosperity, save and except this institution of slavery? If this is true, how do you propose to improve the condition of things by enlarging slavery — by spreading it out and making it bigger? You may have a wen or a cancer upon 35

your person and not be able to cut it out lest you bleed to death; but surely it is no way to cure it to ingraft it and spread it over your whole body. That is no proper way of treating what you regard as a wrong. You see this peaceful way of dealing with it as a wrong — restricting the spread of it, and not 5 allowing it to go into new countries where it has not already existed. That is the peaceful way, the old-fashioned way, the way in which the fathers themselves set us the example.

On the other hand, I have said there is a sentiment which treats it as *not* being wrong. That is the Democratic sentiment 10 of this day. I do not mean to say that every man who stands within that range positively asserts that it is right. That class will include all who positively assert that it is right, and all who, like Judge Douglas, treat it as indifferent, and do not say it is either right or wrong. These two classes of men fall 15 within the general class of those who do not look upon it as a wrong. And if there be among you anybody who supposes that he, as a Democrat, can consider himself “as much opposed to slavery as anybody,” I would like to reason with him. You never treat it as a wrong. What other thing that you con- 20 sider as a wrong do you deal with as you deal with that? Perhaps you say it is wrong, *but your leader never does, and you quarrel with anybody who says it is wrong.* Although you pretend to say so yourself, you can find no fit place to deal with it as a wrong. You must not say anything about it in the free 25 states, *because it is not here.* You must not say anything about it in the slave states, *because it is there.* You must not say anything about it in the pulpit, because that is religion, and has nothing to do with it. You must not say anything about it in politics, *because that will disturb the security of “my place.”* 30 There is no place to talk about it as being a wrong, although you say yourself it is a wrong. But finally you will screw yourself up to the belief that if the people of the slave states should adopt a system of gradual emancipation on the slavery question, you would be in favor of it. You would be in favor 35

of it. You say that is getting it in the right place, and you would be glad to see it succeed. But you are deceiving yourself. You all know that Frank Blair and Gratz Brown, down there in St. Louis, undertook to introduce that system in Missouri. They fought as valiantly as they could for the system of gradual emancipation which you pretend you would be glad to see succeed. Now, I will bring you to the test. After a hard fight they were beaten, and when the news came over here, you threw up your hats and *hurrahed for Democracy*. More than that, take all the argument made in favor of the system you have proposed, and it carefully excludes the idea that there is anything wrong in the institution of slavery. The arguments to sustain that policy carefully excluded it. Even here to-day you heard Judge Douglas quarrel with me because I uttered a wish that it might sometime come to an end. Although Henry Clay could say he wished every slave in the United States was in the country of his ancestors, I am denounced by those pretending to respect Henry Clay for uttering a wish that it might some time, in some peaceful way, come to an end. The Democratic policy in regard to that institution will not tolerate the merest breath, the slightest hint, of the least degree of wrong about it. Try it by some of Judge Douglas's arguments. He says he "don't care whether it is voted up or voted down" in the territories. I do not care myself, in dealing with that expression, whether it is intended to be expressive of his individual sentiments on the subject, or only of the national policy he desires to have established. It is alike valuable for my purpose. Any man can say that who does not see anything wrong in slavery, but no man can logically say it who does see a wrong in it, because no man can logically say he don't care whether a wrong is voted up or down. He may say he don't care whether an indifferent thing is voted up or down, but he must logically have a choice between a right thing and a wrong thing. He contends that whatever community wants slaves has a right to have them. So they

have, if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong. He says that upon the score of equality, slaves should be allowed to go into a new territory, like other property. This is strictly logical if there is no difference between it and other property. If it and other property are equal, his argument is entirely logical. But if you insist that one is wrong and the other right, there is no use to institute a comparison between right and wrong. You may turn over everything in the Democratic policy from beginning to end, whether in the shape it takes on the statute book, in the shape it takes in the Dred Scott decision, in the shape it takes in conversation, or the shape it takes in short maxim-like arguments — it everywhere carefully excludes the idea that there is anything wrong in it.

That is the real issue. That is the issue that will continue in this country, when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles — right and wrong — throughout the world. They are the two principles that have stood face to face from the beginning of time, and will ever continue to struggle. The one is the common right of humanity, and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, "You work and toil and earn bread, and I'll eat it." No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle. I was glad to express my gratitude at Quincy, and I re-express it here, to Judge Douglas — *that he looks to no end of the institution of slavery*. That will help the people to see where the struggle really is. It will hereafter place with us all men who really do wish the wrong may have an end. And whenever we can get rid of the fog which obscures the real question, when we can get Judge Douglas and his friends to avow a policy looking to

its perpetuation, we can get out from among that class of men and bring them to the side of those who treat it as a wrong. Then there will soon be an end of it, and that end will be its "ultimate extinction." Whenever the issue can be distinctly made, and all extraneous matter thrown out so that men can fairly see the real difference between the parties, this controversy will soon be settled, and it will be done peaceably, too. There will be no war, no violence. It will be placed again where the wisest and best men of the world placed it.

Brooks, of South Carolina, once declared that when this Constitution was framed, its framers did not look to the institution existing until his day. When he said this, I think he stated a fact that is fully borne out by the history of the times. But he also said they were better and wiser men than the men of these days; yet the men of these days had experience which they had not, and by the invention of the cotton gin it became a necessity in this country that slavery should be perpetual. I now say that, willingly or unwillingly, purposely or without purpose, Judge Douglas has been the most prominent instrument in changing the position of the institution of slavery which the fathers of the government expected to come to an end ere this — *and putting it upon Brooks's cotton-gin basis* — placing it where he openly confesses he has no desire there shall ever be an end of it.

I understand I have ten minutes yet. I will employ it in saying something about this argument Judge Douglas uses, while he sustains the Dred Scott decision, that the people of the territories can still somehow exclude slavery. The first thing I ask attention to is the fact that Judge Douglas constantly said, before the decision, that whether they could or not, *was a question for the Supreme Court*. But after the court had made the decision he virtually says it is *not* a question for the Supreme Court, but for the people. And how is it he tells us they can exclude it? He says it needs "police regulation," and that admits of "unfriendly legislation." Although

it is a right established by the Constitution of the United States to take a slave into a territory of the United States and hold him as property, yet unless the territorial legislature will give friendly legislation, and, more especially, if they adopt unfriendly legislation, they can practically exclude him. Now, 5 without meeting this proposition as a matter of fact, I pass to consider the real constitutional obligation. Let me take the gentleman who looks me in the face before me, and let us suppose that he is a member of the territorial legislature. The first thing he will do will be to swear that he will support the 10 Constitution of the United States. His neighbor by his side in the territory has slaves, and needs territorial legislation to enable him to enjoy that constitutional right. Can he withhold the legislation which his neighbor needs for the enjoyment of a right which is fixed in his favor in the Constitution of the 15 United States, which he has sworn to support? Can he withhold it without violating his oath? And, more especially, can he pass unfriendly legislation to violate his oath? Why, this is a monstrous sort of talk about the Constitution of the United States! *There has never been as outlandish or lawless a doctrine 20 from the mouth of any respectable man on earth.* I do not believe it is a constitutional right to hold slaves in a territory of the United States. I believe the decision was improperly made, and I go for reversing it. Judge Douglas is furious against those who go for reversing a decision. But he is for legislating 25 it out of all force while the law itself stands. I repeat that there has never been so monstrous a doctrine uttered from the mouth of a respectable man.

I suppose most of us (I know it of myself) believe that people of the Southern states are entitled to a Congressional fugitive 30 slave law — that is, a right fixed in the Constitution. But it cannot be made available to them without Congressional legislation. In the Judge's language, it is a "barren right," which needs legislation before it can become efficient and valuable to the persons to whom it is guaranteed. And as the right is 35

constitutional, I agree that the legislation shall be granted to it — and that not that we like the institution of slavery. We profess to have no taste for running and catching niggers — at least, I profess no taste for that job at all. Why then do I yield support to a fugitive slave law? Because I do not understand that the Constitution, which guarantees that right, can be supported without it. And if I believed that the right to hold a slave in a territory was equally fixed in the Constitution with the right to reclaim fugitives, I should be bound to give it the legislation necessary to support it. I say that no man can deny his obligation to give the necessary legislation to support slavery in a territory, who believes it is a constitutional right to have it there. No man can, who does not give the Abolitionists an argument to deny the obligation enjoined by the Constitution to enact a fugitive slave law. Try it now. It is the strongest Abolition argument ever made. I say if that Dred Scott decision is correct, then the right to hold slaves in a territory is equally a constitutional right with the right of a slaveholder to have his runaway returned. No one can show the distinction between them. The one is express, so that we cannot deny it. The other is construed to be in the Constitution, so that he who believes the decision to be correct believes in the right. And the man who argues that by unfriendly legislation, in spite of that constitutional right, slavery may be driven from the territories, cannot avoid furnishing an argument by which Abolitionists may deny the obligation to return fugitives, and claim the power to pass laws unfriendly to the right of the slaveholder to reclaim his fugitive. I do not know how such an argument may strike a popular assembly like this, but I defy anybody to go before a body of men whose minds are educated to estimating evidence and reasoning, and show that there is an iota of difference between the constitutional right to reclaim a fugitive, and the constitutional right to hold a slave, in a territory, provided this Dred Scott decision is correct. I defy any man to make an argument that will justify unfriendly

legislation to deprive a slaveholder of his right to hold a slave in a territory, that will not equally, in all its length, breadth, and thickness, furnish an argument for nullifying the Fugitive Slave law. Why, there is not such an Abolitionist in the nation as Douglas, after all.

MR. DOUGLAS'S REJOINDER

Mr. Lincoln has concluded his remarks by saying that there is not such an Abolitionist as I am in all America. If he could make the Abolitionists of Illinois believe that, he would not have much show for the Senate. Let him make the Abolitionists believe the truth of that statement, and his political back is broken.

His first criticism upon me is the expression of his hope that the war of the Administration will be prosecuted against me and the Democratic party of this state with vigor. He wants that war prosecuted with vigor; I have no doubt of it. His hopes of success and the hopes of his party depend solely upon it. They have no chance of destroying the Democracy of this state except by the aid of federal patronage. He has all the federal officeholders here as his allies, running separate tickets against the Democracy to divide the party, although the leaders all intend to vote directly the Abolition ticket, and only leave the greenhorns to vote this separate ticket who refuse to go into the Abolition camp. There is something really refreshing in the thought that Mr. Lincoln is in favor of prosecuting one war vigorously. It is the first war that I ever knew him to be in favor of prosecuting. It is the first war that I ever knew him to believe to be just or constitutional. When the Mexican war was being waged, and the American army was surrounded by the enemy in Mexico, he thought that war was unconstitutional, unnecessary, and unjust. He thought it was not commenced on the right *spot*.

When I made an incidental allusion of that kind in the joint discussion over at Charleston some weeks ago, Lincoln, in replying, said that I, Douglas, had charged him with voting against supplies for the Mexican war, and then he reared up, so

full length, and swore that he never voted against the supplies, —that it was a slander,— and caught hold of Ficklin, who sat on the stand, and said, “Here, Ficklin, tell the people that it is a lie.” Well, Ficklin, who had served in Congress with him, stood up and told them all that he recollected about it. It was that when George Ashmun, of Massachusetts, brought forward a resolution declaring the war unconstitutional, unnecessary, and unjust, that Lincoln had voted for it. “Yes,” said Lincoln, “I did.” Thus he confessed that he voted that the war was wrong, that our country was in the wrong, and consequently that the Mexicans were in the right; but charged that I had slandered him by saying that he voted against the supplies. I never charged him with voting against the supplies in my life, because I knew that he was not in Congress when they were voted. The war was commenced on the 13th day of May, 1846, and on that day we appropriated in Congress ten millions of dollars and fifty thousand men to prosecute it. During the same session we voted more men and more money, and at the next session we voted more men and more money, so that by the time Mr. Lincoln entered Congress we had enough men and enough money to carry on the war, and had no occasion to vote for any more. When he got into the House, being opposed to the war, and not being able to stop the supplies, because they had all gone forward, all he could do was to follow the lead of Corwin, and prove that the war was not begun on the right spot, and that it was unconstitutional, unnecessary, and wrong. Remember, too, that this he did after the war had been begun. It is one thing to be opposed to the declaration of a war, another and very different thing to take sides with the enemy against your own country after the war has been commenced. Our army was in Mexico at the time, many battles had been fought; our citizens, who were defending the honor of their country’s flag, were surrounded by the daggers, the guns, and the poison of the enemy. Then it was that Corwin made his speech in which he declared that the Ameri-34

can soldiers ought to be welcomed by the Mexicans with bloody hands and hospitable graves; then it was that Ashmun and Lincoln voted in the House of Representatives that the war was unconstitutional and unjust; and Ashmun's resolution, Corwin's speech, and Lincoln's vote were sent to Mexico and 5 read at the head of the Mexican army, to prove to them that there was a Mexican party in the Congress of the United States who were doing all in their power to aid them. That a man who takes sides with the common enemy against his own country in time of war should rejoice in a war being made on 10 me now, is very natural. And, in my opinion, no other kind of man would rejoice in it.

Mr. Lincoln has told you a great deal to-day about his being an Old Line Clay Whig. Bear in mind that there are a great many Old Clay Whigs down in this region. It is more agree- 15 able, therefore, for him to talk about the Old Clay Whig party than it is for him to talk Abolitionism. We did not hear much about the Old Clay Whig party up in the Abolition districts. How much of an Old Line Henry Clay Whig was he? Have you read General Singleton's speech at Jacksonville? You 20 know that General Singleton was for twenty-five years the confidential friend of Henry Clay in Illinois, and he testified that in 1847, when the constitutional convention of this state was in session, the Whig members were invited to a Whig caucus at the house of Mr. Lincoln's brother-in-law, where Mr. 25 Lincoln proposed to throw Henry Clay overboard and take up General Taylor in his place, giving as his reason that if the Whigs did not take up General Taylor the Democrats would. Singleton testifies that Lincoln, in that speech, urged as another reason for throwing Henry Clay overboard, that the Whigs had 30 fought long enough for principle, and ought to begin to fight for success. Singleton also testified that Lincoln's speech did not have the effect of cutting Clay's throat, and that he (Singleton) and others withdrew from the caucus in indignation. He further states that when they got to Philadelphia to attend the national 35

convention of the Whig party, that Lincoln was there, the bitter and deadly enemy of Clay, and that he tried to keep him (Singleton) out of the convention because he insisted on voting for Clay, and Lincoln was determined to have Taylor. Singleton says that Lincoln rejoiced with very great joy when he found the mangled remains of the murdered Whig statesman lying cold before him. Now, Mr. Lincoln tells you that he is an Old Line Clay Whig! General Singleton testifies to the facts I have narrated, in a public speech which has been printed and circulated broadcast over the state for weeks, yet not a lisp have we heard from Mr. Lincoln on the subject, except that he is an Old Clay Whig.

What part of Henry Clay's policy did Lincoln ever advocate? He was in Congress in 1848-9, when the Wilmot Proviso warfare disturbed the peace and harmony of the country, until it shook the foundation of the Republic from its center to its circumference. It was that agitation that brought Clay forth from his retirement at Ashland again to occupy his seat in the Senate of the United States, to see if he could not, by his great wisdom and experience, and the renown of his name, do something to restore peace and quiet to a disturbed country. Who got up that sectional strife that Clay had to be called upon to quell? I have heard Lincoln boast that he voted forty-two times for the Wilmot Proviso, and that he would have voted as many times more if he could. Lincoln is the man, in connection with Seward, Chase, Giddings, and other Abolitionists, who got up that strife that I helped Clay to put down. Henry Clay came back to the Senate in 1849, and saw that he must do something to restore peace to the country. The Union Whigs and the Union Democrats welcomed him, the moment he arrived, as the man for the occasion. We believed that he, of all men on earth, had been preserved by divine Providence to guide us out of our difficulties, and we Democrats rallied under Clay then, as you Whigs in Nullification time rallied under the banner of old Jackson, forgetting party when the country was

in danger, in order that we might have a country first, and parties afterward.

And this reminds me that Mr. Lincoln told you that the slavery question was the only thing that ever disturbed the peace and harmony of the Union. Did not Nullification once raise its head and disturb the peace of this Union in 1832? Was that the slavery question, Mr. Lincoln? Did not disunion raise its monster head during the last war with Great Britain? Was that the slavery question, Mr. Lincoln? The peace of this country has been disturbed three times,—once during the war with Great Britain, once on the tariff question, and once on the slavery question. His argument, therefore, that slavery is the only question that has ever created dissension in the Union, falls to the ground. It is true that agitators are enabled now to use this slavery question for the purpose of sectional strife. He admits that in regard to all things else, the principle that I advocate, making each state and territory free to decide for itself, ought to prevail. He instances the cranberry laws and the oyster laws, and he might have gone through the whole list with the same effect. I say that all these laws are local and domestic, and that local and domestic concerns should be left to each state and each territory to manage for itself. If agitators would acquiesce in that principle, there never would be any danger to the peace and harmony of the Union.

Mr. Lincoln tries to avoid the main issue by attacking the truth of my proposition, that our fathers made this government divided into free and slave states, recognizing the right of each to decide all its local questions for itself. Did they not thus make it? It is true that they did not establish slavery in any of the states, or abolish it in any of them; but finding thirteen states, twelve of which were slave and one free, they agreed to form a government uniting them together as they stood divided into free and slave states, and to guarantee forever to each state the right to do as it pleased on the slavery question. Having thus made the government,

conferred this right upon each state forever, I assert that this government can exist as they made it, divided into free and slave states, if any one state chooses to retain slavery. He says that he looks forward to a time when slavery shall be abolished everywhere. I look forward to a time when each state shall be allowed to do as it pleases. If it chooses to keep slavery forever, it is not my business, but its own; if it chooses to abolish slavery, it is its own business — not mine. I care more for the great principle of self-government, the right of the people to rule, than I do for all the negroes in Christendom. I would not endanger the perpetuity of this Union, I would not blot out the great inalienable rights of the white men, for all the negroes that ever existed. Hence, I say, let us maintain this government on the principles that our fathers made it, recognizing the right of each state to keep slavery as long as its people determine, or to abolish it when they please. But Mr. Lincoln says that when our fathers made this government they did not look forward to the state of things now existing, and therefore he thinks the doctrine was wrong; and he quotes Brooks, of South Carolina, to prove that our fathers then thought that probably slavery would be abolished by each state acting for itself before this time. Suppose they did; suppose they did not foresee what has occurred,—does that change the principles of our government? They did not probably foresee the telegraph that transmits intelligence by lightning, nor did they foresee the railroads that now form the bonds of union between the different states, or the thousand mechanical inventions that have elevated mankind. But do these things change the principles of the government? Our fathers, I say, made this government on the principle of the right of each state to do as it pleases in its own domestic affairs, subject to the Constitution, and allowed the people of each to apply to every new change of circumstances such remedy as they may see fit to improve their condition. This right they have for all time to come.

Mr. Lincoln went on to tell you that he does not at all desire to interfere with slavery in the states where it exists, nor does his party. I expected him to say that down here. Let me ask him, then, how he expects to put slavery in the course of ultimate extinction everywhere, if he does not intend to interfere with it in the states where it exists? He says that he will prohibit it in all territories, and the inference is, then, that unless they make free states out of them he will keep them out of the Union; for, mark you, he did not say whether or not he would vote to admit Kansas with slavery or not, as her people might apply (he forgot that, as usual, etc.); he did not say whether or not he was in favor of bringing the territories now in existence into the Union on the principle of Clay's Compromise Measures on the slavery question. I told you that he would not. His idea is that he will prohibit slavery in all the territories, and thus force them all to become free states, surrounding the slave states with a cordon of free states, and hemming them in, keeping the slaves confined to their present limits whilst they go on multiplying, until the soil on which they live will no longer feed them, and he will thus be able to put slavery in a course of ultimate extinction by starvation. He will extinguish slavery in the Southern states as the French general exterminated the Algerines when he smoked them out. He is going to extinguish slavery by surrounding the slave states, hemming in the slaves, and starving them out of existence, as you smoke a fox out of his hole. He intends to do that in the name of humanity and Christianity, in order that we may get rid of the terrible crime and sin entailed upon our fathers of holding slaves. Mr. Lincoln makes out that line of policy, and appeals to the moral sense of justice and to the Christian feeling of the community to sustain him. He says that any man who holds to the contrary doctrine is in the position of the king who claimed to govern by divine right. Let us examine for a moment and see what principle it was that overthrew the divine right of George the Third to govern us.

Did not these Colonies rebel because the British Parliament had no right to pass laws concerning our property and domestic and private institutions without our consent? We demanded that the British government should not pass such laws unless they gave us representation in the body passing them, and this the British government insisting on doing, we went to war, on the principle that the Home government should not control and govern distant colonies without giving them a representation. Now, Mr. Lincoln proposes to govern the territories without giving them a representation, and calls on Congress to pass laws controlling their property and domestic concerns without their consent and against their will. Thus, he asserts for his party the identical principle asserted by George III. and the Tories of the Revolution.

I ask you to look into these things and then tell me whether the Democracy or the Abolitionists are right. I hold that the people of a territory, like those of a state (I use the language of Mr. Buchanan in his letter of acceptance), have the right to decide for themselves whether slavery shall or shall not exist within their limits. The point upon which Chief Justice Taney expresses his opinion is simply this: that slaves, being property, stand on an equal footing with other property, and consequently that the owner has the same right to carry that property into a territory that he has any other, subject to the same conditions. Suppose that one of your merchants was to take fifty or one hundred thousand dollars' worth of liquors to Kansas. He has a right to go there, under that decision, but when he gets there he finds the Maine liquor law in force, and what can he do with his property after he gets it there? He cannot sell it, he cannot use it, it is subject to the local law, and that law is against him, and the best thing he can do with it is to bring it back into Missouri or Illinois and sell it. If you take negroes to Kansas, as Colonel Jeff. Davis said in his Bangor speech, from which I have quoted to-day, you must take them there subject to the local law. If the people want the institution

of slavery, they will protect and encourage it; but if they do not want it they will withhold that protection, and the absence of local legislation protecting slavery excludes it as completely as a positive prohibition. You slaveholders of Missouri might as well understand what you know practically, that you cannot 5 carry slavery where the people do not want it. All you have a right to ask is that the people shall do as they please; if they want slavery, let them have it; if they do not want it, allow them to refuse to encourage it.

My friends, if, as I have said before, we will only live up to 10 this great fundamental principle, there will be peace between the North and the South. Mr. Lincoln admits that under the Constitution, on all domestic questions, except slavery, we ought not to interfere with the people of each state. What right have we to interfere with the people of each state? 15 What right have we to interfere with slavery any more than we have to interfere with any other question? He says that this slavery question is now the bone of contention. Why? Simply because agitators have combined in all the free states to make war upon it. Suppose the agitators in the states should com- 20 bine in one-half of the Union to make war upon the railroad system of the other half. They would thus be driven to the same sectional strife. Suppose one section makes war upon any other particular institution of the opposite section, and the same strife is produced. The only remedy and safety is 25 that we shall stand by the Constitution as our fathers made it, obey the laws as they are passed, while they stand the proper test, and sustain the decisions of the Supreme Court and the constituted authorities.

QUESTIONS FOR ANALYSIS

1. *The Speech of Judge Douglas*

Page 241, lines 16-20. Look up carefully the points made by the Supreme Court in the Dred Scott decision.

241 ff. Does Judge Douglas analyze the issue accurately?

243, 17 ff. "First, in regard to his doctrine—" Trace the same argument as it appeared in the Henry-Madison debate.

244, 12 ff. "Suppose the doctrine advocated by Mr. Lincoln—" What is the fallacy of the argument?

248, 12 ff. "I was opposed to that constitution—" Is Judge Douglas consistent with his "Squatter Sovereignty" principles?

251, 30 ff. "And now this warfare is made on me—" Is this discussion relevant? Why?

253, 8-10. "Whigs and Democrats united in establishing the Compromise—" Was tranquillity established?

254, 14. "Let me read what James Buchanan said—" What is the force of this question?

255, 2. Opinion of Chief Justice Taney. Could Judge Douglas consistently adhere to all of the opinion? Explain.

256, 9. "I will follow it wherever its logical conclusions lead me." Does he actually follow where the conclusions lead him?

257, 6-25. Judge Douglas says that slavery is the business of each state, and that if it is so left there will be peace. Is his position sound? Why?

How do you account for the lack of proportion in this speech?

2. *The Speech of Mr. Lincoln*

259, 31. "I want to know if Buchanan—" What kind of argument here? Test.

260, 23 ff. "He could not get his foundation—" Test this, if possible, by reference to Mr. Lincoln's Springfield speech.

261, 28. "Now, while I am upon this subject —" Test the following refutation.

264, 24 ff. "In answer to my proposition —" Analyze carefully this method of refutation.

265, 19 ff. Why does Mr. Lincoln quote at such length from Henry Clay?

271, 31. "It is not true that our fathers —" Is this position sound? Is it supported by evidence?

272, 26 ff. "If we had no war out of it —" What kind of argument is here refuted?

273, 11 ff. "I shall very readily agree —" What kind of argument? Analyze carefully and test it.

274, 16-25. "You may say, and Judge Douglas has —" What is the purpose of this argument?

277, 20 ff. Does this analysis of the issues agree with that of Judge Douglas? Is there a clash of opinion? Could either side ever win?

279, 9 ff. "On the other hand, I have said —" What method is here employed?

282, 25 ff. "I understand I have ten minutes —" Analyze this argument carefully to show how Mr. Lincoln has entrapped Judge Douglas. Where is the climax in the argument?

3. *The Rejoinder of Judge Douglas*

287. Is it wise for Judge Douglas to begin his refutation with the last argument of Mr. Lincoln? Has he met the argument fairly?

Analyze the opening paragraphs of the speech to show how skillfully Judge Douglas turns the argument of Mr. Lincoln.

287, 27 ff. "When I made an incidental allusion —" Compare this argument with the Calhoun-Cass debate. Is this material within the legitimate scope of a rebuttal? Is it argument?

289, 13 ff. "Mr. Lincoln has told you a great deal to-day—" Does Judge Douglas refute the argument on this point?

291, 3 ff. "And this reminds me—" Does Judge Douglas refute Mr. Lincoln's argument on this point?

291, 25 ff. "Mr. Lincoln tries to avoid the main issue—" What is the fallacy in this refutation?

294, 25 ff. "Suppose that one of your merchants—" Trace out carefully the application of this analogy. Has Judge Douglas reconciled "Squatter Sovereignty" with the Dred Scott decision?

**V. THE BEVERIDGE-HOAR DEBATE ON THE
PHILIPPINE QUESTION**

THE BEVERIDGE-HOAR DEBATE ON THE PHILIPPINE QUESTION

THE resolution under discussion was the following: Be it resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Philippine Islands are territory belonging to the United States; that it is the intention of the United States to retain them as such and to establish and maintain such governmental control throughout the archipelago as the situation may demand.

1773

SPEECH OF SENATOR HOAR

(In the Senate, April 17, 1900.)

Mr. President, I have listened, delighted, as have, I suppose, all the members of the Senate, to the eloquence of my honorable friend from Indiana. I am glad to welcome to the public service his enthusiasm, his patriotism, his silver speech, and the earnestness and the courage with which he has devoted himself to a discharge of his duty to the Republic as he conceives it. Yet, Mr. President, as I heard his eloquent description of wealth and glory and commerce and trade, I listened in vain for those words which the American people have been wont to take upon their lips in every solemn crisis of their history. I heard much calculated to excite the imagination of the youth seeking wealth, or the youth charmed by the dream of empire. But the words, Right, Justice, Duty, Freedom, were absent, my friend must permit me to say, from the eloquent speech. I could think, as this brave young Republic of ours listened to what he had to say, of but one occurrence.

Then the devil taketh Him up into an exceeding high mountain and sheweth Him all the kingdoms of the world and the glory of them.

And saith unto Him, "All these things will I give Thee if Thou wilt fall down and worship me."

20

Then saith Jesus unto him, "Get thee hence, Satan."

Mr. President, when, on the 8th of July, 1898, less than two years ago, the lamented Vice-President declared the session of the Senate at an end, the people of the United States were at the high-water mark of prosperity and glory. No other country on earth, in all history, ever saw the like. It was an American prosperity and an American glory.

We were approaching the end of a great century. From thirteen states we had become forty-five states. From 3,000,000 people we had become nearly 80,000,000. An enormous foreign 30

commerce, promising to grow to still vaster proportions in the near future, was thrown into insignificance by an internal commerce almost passing the capacity of numbers to calculate. Our manufactures, making their way past hostile tariffs and fiscal regulations, were displacing the products of the greatest manufacturing nations in their own markets. South of us, from the Rio Grande to Cape Horn, our Monroe Doctrine had banished from the American continent the powers of Europe; Spain and France had retired; monarchy had taken its leave; and the whole territory was occupied by republics owing their freedom to us, forming their institutions on our example. Our flag, known and honored throughout the earth, was welcomed everywhere in friendly ports, and floated everywhere on friendly seas. We were the freest, richest, strongest nation on the face of the earth — strong in all the elements of material strength, stronger still in the justice and liberty on which the foundations of our empire were laid. We had abolished slavery within our own borders by our constitutional mandate, and had abolished slavery throughout the world by the influence of our example.

Our national debt had been reduced with unexampled rapidity. We had increased it somewhat for the necessary expenses of the war. But if it had all been due, we could have paid it all in a single year by a tax solely upon the luxuries of the rich, which the rich would scarcely have felt, and which would have vexed no manufacture and no branch of commerce. Rich in all material wealth, we were richer still in a noble history and in those priceless ideals by which a republic must live or bear no life.

We had won the glory of a great liberator in both hemispheres. The flag of Spain — emblem of tyranny and cruelty — had been driven from the Western Hemisphere, and was soon to go down from her eastern possessions. The war had been conducted without the loss of a gun or the capture of an American soldier in battle. The glory of this great achieve-

ment was unlike any other which history has recorded. It was not that we had beaten Spain. It was not that 75,000,000 people had conquered 15,000,000. Not that the spirit of the nineteenth century had been too much for the spirit of the fifteenth century. Not that the young athlete had felled to the ground 5 a decrepit old man of ninety. It was not that the American mechanic and engineer in the machine shop could make better ships or better guns; or that the American soldier or sailor had displayed the same quality in battle that he had shown on every field — at Bunker Hill, at Yorktown, at Lundy's Lane, 10 at New Orleans, at Buena Vista, at Gettysburg; in every sea fight, on Lake Erie or on the Atlantic. Nobody doubted the skill of the American general, the gallantry of the American admiral, or the courage of the American soldier or sailor. The glory of the war and the victory was that it was a war 15 and a victory in the interest of liberty. The American flag had appeared as a liberator in both hemispheres; when it floated over Havana or Santiago or Manila, there were written on its folds, where all nations could read it, the pledge of the resolution of Congress and the declaration of the 20 President.

Every true American thanked God that he had lived to behold that day. The rarest good fortune of all was the good fortune of President McKinley. He was, in my judgment, the best-beloved President who ever sat in the chair of Washington. 25 His name was inseparably connected with two periods of unexampled prosperity, made more impressive by the period of calamity which came between them. The people believed that to the great measure called by his name was due a time of happiness and comfort never equaled in this country, and 30 never approached by any other. It was the high-water mark on this planet of everything that could bring happiness to a people. But high as the tide reached then, it went still higher under the operation of the policies which came in with his administration. He had won golden honors by his patriotic 35

hesitation in bringing on war, and by his interpretation of the purpose with which the people at last entered upon it.

When I say that President McKinley was the best-beloved President that ever sat in the chair of Washington, I do not mean, of course, to compare the reverence in which any living man is held with that which attends the memory of Washington or Lincoln. But Washington and Lincoln encountered while they were alive a storm of political hostility which President McKinley has fortunately been spared. I repeat, that it seems to me that President McKinley holds a place in the affection of the people at large which no one of his predecessors ever attained in his lifetime.

The promise which the President and the Senate made to Cuba we have, so far, done our best to redeem. When the Spanish fleet was sunk and the Spanish flag went down from over Havana, peace and order and contentment and reviving industry and liberty followed the American flag. Some of us had hoped for the same thing in the East. We had hoped that a like policy would have brought a like result in the Philippine Islands. No man contemplated for a moment the return of those islands to Spain. One of the apostles would as soon have thought of giving back a redeemed soul to the dominion of Satan.

The American people, so far as I know, were all agreed that their victory brought with it the responsibility of protecting the 2 liberated peoples from the cupidity of any other power until they could establish their own independence in freedom and in honor.

I stand here to-day to plead with you not to abandon the principles that have brought these things to pass. I implore 30 you to keep to the policy that has made the country great, that has made the Republican party great, that has made the President great. I have nothing new to say. But I ask you to keep in the old channels, and to keep off the old rocks laid down in the old charts, and to follow the old sailing orders that 35

the old captains of other days have obeyed, to take your
earings, as of old, from the north star,

Of whose true fixed and resting quality

There is no fellow in the firmament,

and not from this meteoric light of empire.

5

I believe that, if not to-day or to-morrow, yet at an early
day, better knowledge of the facts, the light of experience, the
love of liberty and justice which still burns in the hearts of
the Republican masses in this country, will bring that party
back to the principles and policy upon which it planted itself
in the beginning.

No, Mr. President, if we subjugate the Filipinos we are, if
you have your way, to govern 10,000,000 people in the East,
and nearly another million in the West Indies without any con-
stitutional restraint. There will be under the flag 20,000,000
of other races, black men at home and brown men abroad, for
whom it bears no star of hope. I do not see my way clear to
hand them over to Mr. Bryan in the Executive chair, and the
Senators from Alabama and South Carolina, in the Senate, or
to the party of which, beyond all question, they are to be most
powerful and conspicuous leaders.

[Interruption by Senator Tillman.]

I believe, Mr. President, not only that perseverance in this
policy will be the abandonment of the principles upon which
our government is founded, that it will change our Republic
into an empire, that our methods of legislation, of diplomacy,
of administration must hereafter be those which belong to em-
pires, and not those which belong to republics; but I believe
persistence in this attempt will result in the defeat and over-
throw of the Republican party. That defeat may not come
this year or next year. I pray God it may never come. I well
remember when the old Whig party, in the flush of delirium and
anticipated triumph, gave up the great doctrines which it had
so often avowed, and undertook to abandon the great territory
between the Mississippi and the Pacific to its fate. It held its

35

convention at Philadelphia. It selected as its candidate a great military chieftain. Amid the tempest and delirium a quiet delegate from my own state arose and declared to the convention that the Whig party was dead. It seemed that a more audacious, a more foolish, a more astounding utterance never fell upon human ears. And what was the result? The party carried the country and elected its President. [Taylor.] But within less than four years thereafter Daniel Webster, as he lay dying at Marshfield, said, "The Whig party as a political organization is gone; and it is well." Let no such fate attend the Republican party. In my judgment, if not now, it will retrace its steps in time.

In dealing with this question, Mr. President, I do not mean to enter upon any doubtful ground. I shall advance no proposition ever seriously disputed in this country until within twelve months. I shall cite no authority that is not by the common consent of all parties and all men of all shades of opinion recognized as among the very weightiest in jurisprudence and in the conduct of the state. I shall claim nothing as fact which is not abundantly proven by the evidence of the great commanders who conducted this war; by evidence coming from the President and the heads of department, or persons for whose absolute trustworthiness these authorities vouch.

If to think as I do in regard to the interpretation of the Constitution; in regard to the mandates of the moral law or the law of nations, to which all men and all nations must render obedience; in regard to the policies which are wisest for the conduct of the state, or in regard to those facts of recent history in the light of which we have acted or are to act hereafter, be treason, then Washington was a traitor; then Jefferson was a traitor; then Jackson was a traitor; then Franklin was a traitor; then Sumner was a traitor; then Lincoln was a traitor; then Webster was a traitor; then Clay was a traitor; then Corwin was a traitor; then Kent was a traitor; then Seward was a traitor; then McKinley, within two years, 33

was a traitor; then the Supreme Court of the United States has been in the past a nest and hotbed of treason; then the people of the United States, for more than a century, have been traitors to their own flag and their own Constitution.

We are presented with an issue that can be clearly and sharply stated as a question of constitutional power, a question of international law, a question of justice and righteousness, or a question of public expediency. This can be stated clearly and sharply in the abstract, and it can be put clearly and sharply by an illustration growing out of existing facts. 10

The constitutional question is: Has Congress the power, under our Constitution, to hold in subjection unwilling vassal states?

The question of international law is: Can any nation rightfully convey to another, sovereignty over an unwilling people 15 who have thrown off its dominion, asserted their independence, established a government of their own, over whom it has at the time no practical control, from whose territory it has been dis seized, and which it is beyond its power to deliver?

The question of justice and righteousness is: Have we the 20 right to crush and hold under our feet an unwilling and subject people whom we had treated as allies, whose independence we are bound in good faith to respect, who had established their own free government, and who had trusted us?

The question of public expediency is: Is it for our advantage 25 to promote our trade at the cannon's mouth and at the point of the bayonet?

All these questions can be put in a way of practical illustration by inquiring whether we ought to do what we have done, are doing, and mean to do in the case of Cuba; or what 30 we have done, are doing, and some of you mean to do in the case of the Philippine Islands.

It does not seem to me to be worth while to state again at length the constitutional argument which I have addressed to the Senate heretofore. It has been encountered with elo- 35

quence, with clearness and beauty of statement, and, I have no doubt, with absolute sincerity by Senators who have spoken upon the other side. But the issue between them and me can be summed up in a sentence or two, and if, so stated, it cannot be made clear to any man's apprehension, I despair of making it clear by any elaboration or amplification.

I admit that the United States may acquire and hold property, and may make rules and regulations for its disposition.

I admit that, like other property, the United States may acquire and hold land. It may acquire it by purchase. It may acquire it by treaty. It may acquire it by conquest. And it may make rules and regulations for its disposition and government, however it be acquired.

When there are inhabitants on the land so acquired it may make laws for their government. But the question between me and the gentlemen on the other side is this: Is this acquisition of territory, of land or other property, whether gained by purchase, conquest, or treaty, the constitutional end or only a means to a constitutional end? May you acquire, hold, and govern territory or other property as an end for which our Constitution was framed, or is it only a means toward some other and further end? May you acquire, hold, and govern property by conquest, treaty, or purchase for the sole object of so holding and governing it, without the consideration of any further constitutional purpose? Or must you hold it for a constitutional purpose only, such as the making of new states, the national defense and security, the establishment of a seat of government or the construction of forts, harbors, and like works, which, of course, are themselves for the national defense and security? 3

I hold that this acquisition, holding, and governing can be only a means for a constitutional end — the creation of new states or some other of the constitutional purposes to which I have adverted. And I maintain that you can no more hold and govern territory than you can hold and manage cannon or 3

fleets for any other than a constitutional end; and I maintain that the holding in subjection an alien people, governing them against their will for any fancied advantage to them, is not only not an end provided for by the Constitution, but is an end prohibited therein. 5

Now, with due respect to the gentlemen who have discussed this matter, I do not find that they have answered this proposition or undertaken to answer it. I do not find that they have understood it. You have, in my judgment, under your admitted power to acquire, own, and govern territory, which 10 is just like your admitted power to govern, own, and control ships or guns, no more right under the Constitution to hold that territory for the sake of keeping in subjection an alien people than you have the right to acquire, hold, and manage cannon or fleets or to raise armies for the sake of keeping in subjection 15 and under your control an alien people. All these things are means, and means to constitutional and not to unconstitutional ends.

The Constitution of the United States sets forth certain specific objects and confers certain specific powers upon the 20 government it creates. All powers necessary or reasonably convenient for accomplishing these specific objects and exercising these specific powers are granted by implication. In my judgment the Constitution should be liberally construed in determining the extent of such powers. In that I agree with 25 Webster and Hamilton and Lincoln and Washington and Marshall, and not with Calhoun or the Democrats of the time of the war of the Rebellion and since. But the most liberal statesman or jurist never went further than the rule I have stated in claiming constitutional powers for our government. 30 The Constitution says that Congress may make rules and regulations for the government of the territory and other property of the United States. That implies that we may acquire and regulate territory as we may acquire and use other property, such as our ships of war, our cannon, or forts or arsenals. But 35

territory, like other property, can only be acquired for constitutional purposes, and cannot be acquired and governed for unconstitutional purposes. Now, one constitutional purpose is to admit new states to the Union. That is one of the objects for which the Constitution was framed. So we may acquire and hold and govern territory with that object in view. But governing subject peoples, and holding them for that purpose, is not a constitutional end. On the contrary, it is an end which the generation which framed the Constitution and the Declaration of Independence declared was unrighteous and abhorrent. So, in my opinion, we have no constitutional power to acquire territory for the purpose of holding it in subjugation, in a state of vassalage or serfdom, against the will of its people.

It is to be noted just here that we have acquired no territory or other property in the Philippine Islands, save a few public buildings. By every other acquisition of territory the United States became a great landowner. She owned the public lands as she had owned the public lands in the Northwest ceded to her by the old states. But you own nothing in the Philippines. The people own their farms and dwellings and cities.¹ The religious orders own the rest. The Filipinos desire to do what our English ancestors did in the old days when England was Catholic. The laity feared that the Church would engross all the land; so they passed their statute of mortmain. You have either got to let the people of the Philippine Islands² settle this matter for themselves, or you must take upon you the delicate duty of settling it for them. Your purchase or conquest is a purchase or conquest of nothing but sovereignty. It is a sovereignty over a people who are never to be admitted to exercise it or share it.³

In the present case we have not, I repeat, bought any property. We have undertaken to buy mere sovereignty. There were no public lands in the Philippine Islands, the property of Spain, which we have bought and paid for. The mountains of iron and the nuggets of gold and the hemp-bearing fields—3

do you propose to strip the owners of their rightful title? We have undertaken to buy allegiance, pure and simple. And allegiance is just what the law of nations declares you cannot buy. The power of Congress to dispose of territory or other property of the United States, invoked in this debate, as the foundation of your constitutional right, may carry with it in a proper case a right to the allegiance of the occupant of the soil we own. But we have not bought any property there. The mountains of iron, the nuggets of gold, the hemp-bearing fields, the tobacco and sugar and coffee are not ours, unless holding first that we can buy of Spain an allegiance which this people have shaken off, which Spain could not deliver, which does not exist in justice or in right, we can then go on and say that the Constitution of the United States does not apply to territory, and that we will proceed to take the private property of this people for public use, without their consent. 5 10 15

It is understood that the Filipino people propose to dispossess the religious orders of their vast real estate possessions. They are Catholics. But they desire to do what Catholic England did long before the Reformation — preventing the engrossment by the Church of vast and valuable lands needed by the people. As I understand it, our treaty binds us to confirm those titles, and that is one of the things which has provoked this people to their desperate resistance. Upon the question of the justice of their demand I do not propose now to enter. 25

Whether the inestimable and imperishable principles of human liberty are to be trampled down by the American Republic, and whether its great bulwark and fortress, the American Constitution, impregnable from without, is to be betrayed from within, is our question now. 30

I have been unable to find a single reputable authority more than twelve months old for the power now claimed for Congress to govern dependent nations or territories not expected to become states. The contrary, until this war broke out, has been taken as too clear for reasonable question. 35

[Here Senator Hoar quotes from Webster, Madison, and the Supreme Court.]

Our territories, so far, have all been places where Americans would go to dwell as citizens, to establish American homes, to obtain honorable employment, and to build a state. Will any man go to the Philippine Islands to dwell, except to help govern the people, or to make money by a temporary residence? The men of the Philippines, under the Constitution and the existing laws, may become your fellow-citizens. You will never consent, in the sense of a true citizenship, to become theirs.

Mr. President, our friends who take another view of this question like to tell us of the mistakes of the great men of other days who have vainly protested against acquisition of territory. One worthy and most exuberant gentleman in another place points out to his hearers the folly of Webster and Clay, the delusions of Charles Sumner, and contrasts them with the wisdom of Jefferson and Tyler and Polk. Mr. Jefferson declared that the acquisition of Louisiana was unconstitutional, and wanted a constitutional amendment to justify it. I think the general sense of the American people is that in that particular Mr. Jefferson was in error, and that our power to admit new states clearly involves the power to acquire territory from which new states are to be made. I wonder, however, if there be any man now alive who now holds or who ever did or who ever will hold a seat in either house of Congress, willing to say that, having taken an oath to support the Constitution, he would, for any purpose of public advantage, forswear himself for the sake of a real or fancied good to his country. I hope and believe that the spirit of Fletcher of Saltoun, who said he would die to serve Scotland, but he would not do a base thing to save her, is still the spirit of American statesmanship. That exuberant gentleman contrasts the statesmanship of Polk and Tyler with that of Daniel Webster and Henry Clay and Charles Sumner. Somehow or other the names of Webster

and Clay and Sumner live in the hearts and on the lips of their countrymen, while the men who brought on the Mexican war in the interests of slavery are forgotten. I do not think we hear of men building to those counselors or celebrating their birthdays or writing their lives. In all generations, the statesmen who have appealed to righteousness and justice and freedom have left an enduring place in the loving memory of their countrymen, while the men who have counseled them to walk in the path of injustice and wrong, even if it led to empire and even if they were in the majority in their own day, are forgotten and despised. Ah, Mr. President, that gentleman says we are the anointed of the Lord as the Jews were anointed of the Lord. But the Jewish empire is forgotten. The sands of the desert cover the foundations of her cities. The spider spins its thread, the owl makes its midnight perch, in their palaces. But still those little words, "Thou shalt not steal; thou shalt not covet that that is thy neighbor's; whatever ye would that men shall do to you, do ye even so again unto them," shine through the ages, blazing and undimmed. Mr. President, you may speculate; you may refine; you may doubt; you may deny. But the one foremost action in our history, the foremost action in all history, is the writing upon its pages those simple and sublime opening sentences of the Declaration of Independence. And the men who stand by it shall live in the eternal memory of mankind; and the men who depart from it, however triumphant and successful in their little policies, shall perish and be forgotten, or shall be remembered only to be despised.

When hostilities broke out, February 5th, 1899, we had no occupancy of and no title of any kind to any portion of the Philippine territory except the town and bay of Manila. Everything else was in the peaceful possession of the inhabitants. In such a condition of things, Mr. President, international law speaks to us with its awful mandate. It pronounces your proposed action sheer usurpation and robbery. You have

no better title, according to the law of nations, to reduce this people to subjection than you have to subjugate Mexico or Haiti or Belgium or Switzerland.

This is the settled doctrine, as declared by our own great masters of jurisprudence.

You have no right, according to the law of nations, to obtain by purchase or acquisition sovereignty over a people which is not actually exercised by the country which undertakes to convey it or yield it.

It is a familiar principle of the common law that you cannot make a lawful purchase of land of which the seller is disseized, or of a chattel of which he is dispossessed. The reason of this doctrine is to prevent the purchase of lawsuits. This rule applies with tenfold force to undertaking to purchase human beings when their country and the selling power is dispossessed at the time of the sale, and where the title can be enforced only by war.

We have not yet completed the acquisition. But at the time we entered upon it, and at the time of this alleged purchase, the people of the Philippine Islands, as appears by General Otis's report, by Admiral Dewey's report, and the reports of officers for whom they vouched, held their entire territory, with the exception of the single town of Manila. They had, as appears from these reports, a full organized government. They had an army fighting for independence, admirably disciplined, according to the statement of zealous advocates of expansion.

Why, Mr. President, is it credible that any American statesman, that any American Senator, that any intelligent American citizen anywhere, two years ago could have been found to affirm that a proceeding like that of the Paris treaty could give a just and valid title to sovereignty over a people situated as were the people of those islands? a title of Spain, originally by conquest, never submitted to nor admitted by the people of the islands, with frequent insurrections at different times for

centuries; and then the yoke all thrown off, a constitutional government, schools, colleges, churches, universities, hospitals, town governments, a legislature, a cabinet, courts, a code of laws, and the whole island occupied and controlled by its people, with the single exception of one city; with taxes law- 5 fully levied and collected, with an army and the beginning of a navy.

And yet the Senate — the Congress — enacted less than two years ago that the people of Cuba — controlling peaceably no part of their island, levying no taxes in any orderly or peace- 10 able way, with no administration of justice, no cabinet — not only of a right ought to be, but were in fact, a free and independent state. I did not give my assent to that declaration of fact. I assented to the doctrine that they of right ought to be. But I thought the statement of fact much calculated to 15 embarrass the government of the United States, if it were bound by that declaration; and it has been practically disregarded by the administration ever since. But the question now is a very different one. You not only deny that the Filipinos are, but you deny that they of a right ought to be, free and independ- 20 ent; and you recognize Spain as entitled to sell to you the sovereignty of an island where she was not at the time occupying a foot of territory, where her soldiers were held captives by the government of the island, — a government to which you had delivered over a large number of Spanish prisoners to be 25 held as captives. And yet you come here to-day and say that they not only are not, but they of right ought not to be, free and independent; and when you are pressed you answer us by talking about mountains of iron and nuggets of gold, and trade with China. 30

I affirm that you cannot get by conquest, and you cannot get by purchase, according to the modern law of nations, according to the law of nations as accepted and expounded by the United States, sovereignty over a people, or title to a territory, of which the power that undertakes to sell it, or the 35

power from whom you undertake to wrest it, has not the actual possession and dominion. Under municipal law you cannot buy a horse of which the seller is dispossessed; you cannot buy a foot of land of which he is disseized. You cannot purchase a lawsuit. Under international law you cannot buy a people from a power that has no actual dominion over them. You cannot buy a war. More than this, you cannot buy a tyrant's claim to subject again an oppressed people who have achieved their freedom.

You cannot buy the liberties of a people from a dispossessed tyrant, liberties they have bravely won for themselves in arms. You cannot buy sovereignty like merchandise and men like sheep. The King of England kept, down to 1800, the title of Duke of Normandy and King of France. Could any other country or all Europe together have bought France of King George? I wonder what would have happened if, instead of acknowledging our independence, any time before the French treaty France had bought England out and undertaken to assert her title to the United States. These questions have to be answered, not amid the shouting and applause of a political campaign, not in party platforms, not alone in a single campaign or a single generation. They have got to be answered to history, to the instructed conscience of the civilized world, when the passions and the greed and the ambitions of a single generation have gone by and are cold. And there will be to them but one answer.

I shall show beyond all question or cavil, from the evidence of our own commanders, that this was a people. They were a people who had taken arms for liberty. They had achieved liberty. They had taken arms to establish a republic. They had established a republic — the first republic of the Orient.

Now, international law has something to say about this matter. Will the American people, for the first time in their history, disregard its august mandates?

You gentlemen who desire to hold on to the Philippine Islands are trying to plant the United States squarely upon this doctrine. You must affirm that a people rising for their own liberties against a tyrant, and having got actual possession of their own territory, and having dispossessed the oppressor, have 5 no rightful title thereto.

Not only are we violating our own Constitution, and the great precepts of the Declaration of Independence which, as the Supreme Court of the United States has declared, is to control and interpret, being, as the Court says, but the letter of 10 which the Declaration of Independence is the spirit, but we are equally violating the accepted precepts of the law of nations as expounded by our own great authorities.

If there be one thing above others which is the glory of the American Republic, it is the respect and obedience it has ever 15 paid to international law. It is that law, the product of Christianity, which prevents every weak nation on the earth from becoming the prey of the stronger ones. It is to nations what the conscience is to the individual soul. It finds its enforcement and sanction in the public opinion of the civilized world, 20 a power, according to Mr. Webster, stronger than armies or navies. No nation escapes the penalty of its infraction. As Mr. Webster says, it pursues the conqueror to the very scene of his ovation, and wounds him with the sting that belongs to the consciousness of having outraged the opinion of 25 mankind.

From many authorities I will cite a few.

First, President McKinley, in the language so often quoted. When the President said that —

Forcible annexation, according to our American code of morals, would 30 be criminal aggression,

was he a copperhead? Was he disloyal to the flag? Was not he Republican? Was there ever an utterance so calculated to give courage to Aguinaldo and his people as that?

When he said,—

Human rights and constitutional privileges must not be forgotten in the race for wealth and commercial supremacy. The government of the people must be by the people and not by a few of the people. It must rest upon the free consent of the governed and all of the governed. Power, it must be remembered, which is secured by oppression or usurpation or by any form of injustice, is soon dethroned. We have no right in law or morals to usurp that which belongs to another, whether it is property or power,—

was he a traitor?

I suppose Chancellor Kent is recognized everywhere as the ablest American writer of jurisprudence, unless some of us were to agree with Kent himself, in assigning the superiority to Story. He says:

Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence.

This general law of property applies to the right of territory no less than to other rights. The practice of nations has been conformable to this principle, and the conventional law of nations is full of instances of this kind.

Sumner said in his speech before the Republican state convention of Massachusetts in 1869:

And he knows our country little, and little also of that great liberty of ours, who supposes that we could receive such a transfer. On each side there is impossibility. Territory may be conveyed, but not a people.

But why multiply citations to a Senate who, within two years, affirmed that Cuba of a right ought to be free and independent, and to a Congress and a President that declared war to make that declaration good? You were stating a doctrine of public law, were you not? You were not uttering a lying revolutionary pronunciamento. You were speaking for a great nation on a solemn occasion. You were speaking words of truth and soberness, words you meant to make good with the lives of your sons. The first and the last declaration of public

law ever made by the American people, the declaration of 1776 and the declaration of 1898, are in full accord and harmony. They both justify the Philippine people and condemn us.

The Declaration of Independence is not so much a declaration of rights as a declaration of duties. It prescribes a rule 5 of conduct for men in the same state to one another, and for the nations of the earth to one another. Like the golden rule, it makes the law of individual right the law also of individual duty. Do Senators reflect how this "imperialism," as they call it, is inaugurating a revolution not only in the law of 10 nations, not only in the fundamental law by which the people of the United States have governed themselves until now, not only in the interpretation of the Constitution, but in the moral law itself? As I hear the utterances of some worthy gentlemen taking the name of God upon their lips, it seems to me as 15 if they thought the balance of the universe itself had changed within this year, and that God had gone over to the side of Satan.

There is one question I should like to put to the Republican majority in the Senate and to the Republican party in the 20 country: Is this doctrine true or is it false? Are you to stand on it any longer, or are you going to whistle it down the wind?

Thomas Jefferson declared it, this precise doctrine now at stake here. John Quincy Adams reaffirmed it again and again. 25 Abraham Lincoln said he was willing to be assassinated for it. Charles Sumner was almost assassinated for it in his place in the Senate chamber. Republican national conventions in 1856 and 1860 and in later years have reaffirmed it again and again. President McKinley, two years ago, made the most extreme 30 statement of it to be found in literature.

Now, either this thing is true, or it is a lying pretense. If it be a lying pretense, the country has stood on a lie during its whole history. If it be true, the country is dishonored when we depart from it. For myself, I believe it is true; I have 35

tried to live by it; I am contented to die by it; my love of country rests on it; my pride of ancestry rests on it. To me that is what the flag symbolizes and stands for.

I believe that utterance made at Philadelphia in 1776 to have been the greatest evangel that ever came to mankind since the story of Bethlehem. Like the shot fired at Concord, it was heard around the world. It was heard with fear in the palace of the tyrant; it was heard with joy in the huts where poor men dwelt. I reverently believe it was heard with joy in heaven itself. 5 10

I believe, also, that if the gloss put upon that great declaration by the Senator from Connecticut had been uttered then, it would have been received with a burst of derisive laughter in hell, and Satan himself would have led the chorus.

We have had so far some fundamental doctrine, some ideals to which this people has been devoted. Have you anything to give us in their place? You are trying to knock out the corner stones. Is there any material from your swamp and mud and morass from which you can make a new foundation for our temple? 15 20

Gentlemen tell us that the bill of the Senator from Wisconsin is copied from that introduced in Jefferson's time for the purchase of Louisiana. Do you claim that you propose to deal with these people as Jefferson meant to deal with Louisiana? You talk of Alaska, of Florida, of California; do you mean to deal with the Philippines as we mean to deal with Alaska and dealt with Florida or California? 25

It was safe to give Jefferson — who thought it wicked to govern a people against its will — a power with which gentlemen who think it is right ought never to be trusted. 30

I have spoken of the Declaration of Independence as a solemn affirmation of public law, but it is far more than that. It is a solemn pledge of national faith and honor. It is a baptismal vow. It is the bedrock of our republican institutions. It is, as the Supreme Court declared, the soul and 35

spirit of which the Constitution is but the body and letter. It is the light by which the Constitution must be read. The statesman or the party who will not stand by the Declaration and obey it is never to be trusted anywhere to keep an oath to support the Constitution. To such a statesman, whenever 5 his ambition or his passion shall incline him, to such a party, whenever its fancied advantage shall tempt it, there will be no constitutional restraint. It will bend the Constitution to its desire, never its desire to the Constitution. (*Constitutio ad causam accommodatur, non causa ad constitutionem.*) 10

There is expansion enough in it, but it is the expansion of freedom and not of despotism; of life, not of death. Never was such growth in all human history as that from the seed Thomas Jefferson planted. The parable of the mustard seed, than which, as Edward Everett said, "the burning pen of in- 15 spiration, ranging heaven and earth for a similitude, can find nothing more appropriate or expressive to which to liken the Kingdom of God," is repeated again: "Whereunto shall we liken it, or with what comparison shall we compare it? It is like a grain of mustard seed, which, when it is sown in the 20 earth, is less than all the seeds that be in the earth. But when it is sown, it groweth up, and becometh greater than all herbs, and shooteth out great branches, so that the fowls of the air may lodge under the shadow of it." This is the expansion of Thomas Jefferson. It has covered the con- 25 tinent. It is on both the seas. It has saved South America. It is revolutionizing Europe. It is the expansion of freedom. It differs from your tinsel, pinchbeck, pewter expansion as the growth of a healthy youth into a strong man differs from the expansion of an anaconda when he swallows his victim. 30 Ours is the expansion of Thomas Jefferson. Yours is the expansion of Aaron Burr. It is destined to as short a life and to a like fate.

Until within two years the American people have been wont to appeal to the Declaration of Independence as the 35

foremost State paper in history. As the years go round, the Fourth of July has been celebrated wherever Americans could gather together, at home or abroad. To have signed it, as an American, was better than a title of nobility. It was a passionate utterance of a hasty enthusiasm. There was nothing of the radical in it; nothing of Rousseau; nothing of the French Revolution. It was the sober utterance of the soberest men of the soberest generation that ever lived. It was the declaration of a religious people at the most religious period of their history. It was a declaration not merely of rights but of duties. It was an act not of revolution but of construction. It was the corner stone, the foundation stone, of a great national edifice wherein the American people were to dwell forever more. The language was the language of Thomas Jefferson. But the thought was the thought of every one of his associates. The men of the Continental Congress meant to plant their new nation on eternal verities which no man possessed by the spirit of liberty could ever thereafter undertake to challenge. As the Christian religion was rested by its author on two sublime commandments on which hang all the law and the prophets, so these men rested republican liberty on two sublime verities on which it must stand if it can stand at all; in which it must live, or bear no life. One was the equality of the individual man with every other in political right. The other is that you are now seeking to overthrow — the right of every people to institute their own government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness, and so to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them. Equality of individual manhood and equality of individual states. This is the doctrine which the Republican party is now urged to deny.

To justify that denial the advocates of the policy of imperialism are driven to the strange affirmation that Thomas

Jefferson did not believe it and contradicted it when he purchased Louisiana; that John Quincy Adams did not believe it and contradicted it when he bought Florida; that Abraham Lincoln did not believe it and contradicted it when he put down the rebellion; that Charles Sumner did not believe it and contradicted it when he bought Alaska. They say that because, with the full and practical consent of the men who occupied them, these men bought great spaces of territory occupied by sparse and scattered populations, neither owning it nor pretending to own it, nor capable of occupying it or governing it, destitute of every single attribute which makes or can make a nation or a people, those statesmen of ours, designing to make the territory acquired into equal states, to be dwelt in and governed under our Constitution by men with rights equal to our own—that therefore you may get by purchase or by conquest an unwilling people, occupying and governing a thickly settled territory, possessing every attribute of a national life, enjoying a freedom they have themselves achieved; that you may crush out their national life; that you may overthrow their institutions; that you may strangle their freedom; that you may put over them governors whom you appoint, and in whose appointment they have no voice; that you may make laws for them in your interest and not in theirs; that you may overthrow their republican liberty, and in doing this you appeal to the example of Thomas Jefferson and John Quincy Adams and Abraham Lincoln and Charles Sumner. 5 10 15 20 25

Thomas Jefferson comes down in history with the Declaration of Independence in one hand and the title deed of Louisiana in the other. Do you think his left hand knew not what his right hand did? Do you think these two immortal transactions contradicted each other? Do you think he bought men like sheep and paid for them in gold? It is true the men of the Declaration held slaves. Jefferson felt the inconsistency and declared that he trembled for his country when he felt 35

that God was just. But he lived and died in the expectation that the Declaration would abolish slavery, as it did.

In every accession of territory to this country ever made we recognized fully the doctrine of the consent of the governed and the doctrine that territory so acquired must be held to be made into states.

The confusion of the argument of our friends on the other side comes from confounding the statement in the Declaration of the rights of individuals with the statement of the rights of nations, or peoples, in dealing with one another. I

The whole Declaration is a statement of political rights and political relations and political duties.

First. Every man is equal in political rights, including the right to life, liberty, and the pursuit of happiness, to every other. I

Second. No people can come under the government of any other people, or of any ruler, without its consent. The law of nature and of nature's God entitle every people to its separate and equal station among the powers of the earth. Our fathers were not dealing, in this clause, with the doctrine of the social compact; they were not considering the rights of minorities; they used the word "people" as equivalent to "nation," or "state," as an organized political being, and not as a mere aggregate of persons not collected or associated. They were not thinking of Robinson Crusoe in his desolate island, or of scattered settlers, still less of predatory bands roaming over vast regions they could neither own nor occupy. They were affirming the right of each of the thirteen colonies separately, or of all together, to throw off the yoke of George III. and to separate itself or themselves from Great Britain. 3 Now you must either admit that what they said was true, or you must affirm the contrary.

The question is put with an air of triumph as if it were somehow hard to answer. If this doctrine of yours apply to a million men, why does it not apply to a hundred men? At 3

what point in the census do men get these God-given rights of yours? Well, the answer is easy enough. Our fathers, in the affirmation of the Declaration of Independence you are now denying, were speaking of the equal rights of nations, of their duties to each other. The exact point where a few scattered settlements become a people, or a few nomadic tribes a nation, may not admit of precise mathematical definition. At what point does a brook become a river? When does a pond become a lake, or a lake a sea, or a breeze a hurricane? You cannot tell me. But surely there are nations and peoples, there is organized national life; and there are scattered habitations and wandering tribes to whom these titles are never applied. Louisiana, Florida, Alaska, New Mexico, California, neither had, nor did their inhabitants claim to have, such a national vitality when we acquired them. And if there were anything of that sort when we annexed them, it desired to come to us. And it came to us to become a part of us — bone of our bone, flesh of our flesh, life of our life, soul of our soul.

But I can give you two pretty safe practical rules, quite enough for this day's purpose. Each of them will solve your difficulty, if you have a difficulty and want to solve it. That is a people, that is a power of the earth, that is a nation entitled as such to its separate and equal station among the powers of the earth by the laws of nature and of nature's God, that has a written constitution, a settled territory, an independence it has achieved, an organized army, a congress, courts, schools, universities, churches, the Christian religion; a village life in orderly, civilized, self-governed municipalities; a pure family life, newspapers, books, statesmen who can debate questions of international law, like Mabini, and organize governments, like Aguinaldo; poets like José Rizal; aye, and patriots who can die for liberty, like José Rizal. The Boer republic is a nation, and it is a crime to crush out its life, though its population be less than that of Providence, R. I. Each one of our old thirteen states would have been a nation even if it

had stood alone. And the Philippine republic, with twenty times the number of the Boers, a people more than the whole thirteen states who joined in the Declaration put together, is a nation, and it is a greater crime still to crush out its life.

There is another rule that will help any Senator out of his difficulty. It must be a comfort to every one of you in his perplexity. Every people is of right entitled to its independence that has got as far as Cuba had in the spring of 1898. You all admit that. Admit! You all avow, affirm, strenuously insist on that. You will all pledge your lives and fortunes and sacred honor for that. You will go to war and send your sons to war to maintain that. If Spain shall deny it, or any other country but Great Britain, woe be to her. It isn't necessary, according to you, to have a constitution; it isn't necessary to have courts; it isn't necessary to have a capital; it isn't necessary to have a school. The seat of government may be in the saddle. It isn't necessary to occupy a city, or to have a seaport; it isn't necessary to hold permanently an acre of land; it isn't necessary to have got the invader out of the country; it isn't necessary to have a tenth part of the claim the Filipinos have, or to have done a tenth part of the things the Filipinos have done. You settled all this for yourselves and for the country long ago — March 10, 1898. So I assume you have only put this conundrum for the pleasure of answering it yourselves. . . .

Senators, if there were no Constitution, if there were no Declaration, if there were no international law, if there were nothing but the history of the past two years, the American people would be bound in honor, if there be honor, bound in common honesty, if there be honesty, not to crush out this Philippine republic, and not to wrest from this people its independence. The history of our dealing with the Philippine people is found in the reports of our commanders. It is all contained in our official documents, and in published statements of General Anderson, and in the speeches of the Presi-

dent. It is little known to the country to-day. When it shall be known, I believe it will cause a revolution in public sentiment.

There are 1200 islands in the Philippine group. They extend as far as from Maine to Florida. They have a population variously estimated at from 8,000,000 to 12,000,000. There are wild tribes who never heard of Christ, and islands that never heard of Spain. But among them are the people of the island of Luzon, numbering 3,500,000, and the people of the Visayan Islands, numbering 2,500,000 more. They are a Christian and civilized people. They wrested their independence from Spain and established a republic. Their rights are no more to be affected by the few wild tribes in their own mountains or by the dwellers in the other islands than the rights of our thirteen states were affected by the French in Canada, or the Six Nations of New York, or the Cherokees of Georgia, or the Indians west of the Mississippi. Twice our commanding generals, by their own confession, assured these people of their independence. Clearly and beyond all cavil we formed an alliance with them. We expressly asked them to coöperate with us. We handed over our prisoners to their keeping; we sought their help in caring for our sick and wounded. We were told by them again and again and again that they were fighting for independence. Their purpose was as well known to our generals, to the War Department, and to the President, as the fact that they were in arms. We never undeceived them until the time when hostilities were declared in 1899. The President declared again and again that we had no title and claimed no right to anything beyond the town of Manila. Hostilities were begun by us at a place where we had no right to be, and were continued by us in spite of Aguinaldo's disavowal and regret and offer to withdraw to a line we should prescribe. If we crush that republic, despoil that people of their freedom and independence, and subject them to our rule, it will be a story of shame and dishonor.

Is it right, is it just, to subjugate this people? To substitute our government for their self-government, for the constitution they have proclaimed and established, a scheme of government such as we could devise 10,000 miles away?

Is it right to put over them officers whom we are to select and they are to obey and pay?

Is it right to make tariffs for our interests and not theirs?

Are the interests of the Manila tobacco grower to be decided upon hearings given to the tobacco raisers of the Connecticut River Valley?

Are these mountains of iron, and nuggets of gold, and stores of coal, and hemp-bearing fields, and fruit-bearing gardens to be looked upon by our legislators with covetous eyes?

Is it our wealth or their wealth these things are to increase?

There are other pregnant questions, some of which perhaps require a little examination and a little study of the reports of our commanders.

Had they rightfully achieved their independence when hostilities began between us and them?

Did they forfeit their independence by the circumstances of the war?

On the whole, have they not shown that they are fit for self-government, fit as Cuba, fit as Greece, fit as Spain, fit as Japan, fit as Haiti or San Domingo, fit as any country to the south of us, from the Rio Grande to Cape Horn, was when, with our approval, those countries won their liberties from Spain?

Can we rightfully subjugate a people because we think them unfit for self-government?

[Quotations from officers' reports and accounts showing that the Filipinos were fighting for independence, that they had achieved it, that they were fit for it, and that the United States had so recognized.]

A little more than fourteen months ago there were presented

to the Senate two propositions in sharp contrast with each other. One was a proposition to deal with the Philippine Islands as we dealt with Cuba; to assure them of their liberty; to protect them against foreign ambition and to lend our aid in restoring order; to speed them with our blessing on the pathway of freedom and independence, equal among independent nations, making such treaties with them for future commerce and intercourse as our advantage and theirs would require, and as their goodwill and gratitude might be willing to grant.

10

The other was to buy them like slaves; to pay for them in gold; to set up against them the dishonored and discredited title of Spain, and to conquer them to a sullen submission and to a future of perpetual hatred and fear.

The Senate took its choice. We have had twelve months' experience. We can tell already something of the cost of this thing. It has cost us more than one hundred and fifty millions in money. An increase over 1898 of the cost of the Army of more than one hundred and twenty-two millions; of the Navy, of six millions; of the pension list, four millions.

20

But all this is the merest trifle. It has cost us the lives of 6000 men who are dead. It has wrecked the lives of other thousands, victims of disease and of wounds. It compels us to maintain in the future a large and costly military and naval force.

25

You are to keep, certainly, hereafter, 50,000 private soldiers, in the flower of their youth, in that tropical clime. What is to be their fate?

Mr. President, worse than the most lavish expenditure, worse than the heaviest burden of national debt, worse than the loss of precious lives, worse than the reduction of wages, worse than the overthrow of our settled fiscal policies, is the price, the terrible price, we are to pay, if there be any lesson to be learned from human experience, in the souls of the young men we are to send as soldiers to the tropics. Have you read

30

the horrible, the unquotable story which comes from the English official reports of the life of the common soldiers of the English army in India? I wonder if our enthusiastic gentlemen, who prate so glibly of dominion and empire — I wonder if our well-meaning clergymen, who fancy themselves preaching the gospel of Christ to these yellow congregations, have read anything or care anything for the lessons of experience?

Hardly a department of the government does not add some items of cost incident to a control or a knowledge of the late Spanish possessions. 1

The government of these islands will be a military government, to be assisted and gradually superseded by civil officers. No sums adequate to the purpose have been asked for, nor has any money been asked to construct and equip coast and harbor defenses necessary to military occupation or for the improvement of harbors and waterways, cleansing cities and towns, construction and maintenance of military and other railroads, relief of the needy, and the many items of expense incident to the occupation of distant and unprotected possessions, peopled by poor and untaught natives, oppressed into insurrection, and at present undisciplined to control of any kind. To keep the army of occupation of sufficient strength will involve a fearful drain upon the population of the United States, equal to more than double the loss of an army in a great battle. The cost of administering justice will not be small; the actual and constant rebellion of the natives against our rule is a strong probability, and the sullen opposition of a home-rule element must be faced and met. The islands do not promise to be self-supporting to the extent of providing for such contingencies as rebellion, and so the annual cost to the people of the United States must be increased, even as an insurance against an uprising. 2
3

But let us look at the cost other than in money. We are to give up many of the ideals (I had almost said every ideal) of the Republic. We must give up our great, priceless pos- 35

sessions; more precious than jewels or gold, more precious than land or power. The counsels of Washington are for us no longer; the truths of the Declaration of Independence are no longer our maxims of government; the Monroe Doctrine, to which one hemisphere owes its freedom, is gone. The counsels of Lincoln, to give effect to which he repeatedly declared he would welcome assassination itself, are not to be listened to hereafter, or, if listened to, it will be by other ears than ours. 5

Another thing we have lost by last winter's terrible blunder. 10 We lost the right to speak with authority in favor of peace at the Hague. The world took, I hope and believe, a forward step in that great conference. But think what might have been! We have lost the right to offer our sympathy to the Boer in his wonderful and gallant struggle against terrible 15 odds for the republic in Africa.

O Freedom dear, if ever man was free,
In all the ages, earned thy favoring smile,
This patient man has earned it. In his cause
Pleads all the world to-day —

20

all the world except the nation that is engaged in crushing out a republic in the Philippines.

We have lost our power to speak with authority in behalf of the disarmament of nations. We must prepare ourselves for a great standing army. We already hear the demand for a 25 large standing army, and a navy equal to that of England. The American child hereafter must be born with a mortgage round his neck. The American laborer hereafter must stagger through life with a soldier on his back.

It is said that it is not a sordid argument, or a sordid nation, 30 that considers the advantage of trade and commercial intercourse, and that is true if the argument be used in its proper place. The consideration becomes a sordid, a base, and ignoble argument when we use it to determine the question whether we shall do justice. 35

When you are tempted to take what belongs to another, to crush out the liberties of a people, then the suggestion that you are to make money by the transaction becomes as sordid and base a suggestion as ever was whispered into a covetous and greedy ear.

When you are asked to abandon your cherished principles, your lofty ideals, your benignant influence on mankind, to turn your polar star, your morning star, into a comet, the suggestion of money-getting seems to me infinitely pitiful.

But we are told if we oppose the policy of our imperialistic and expanding friends we are bound to suggest some policy of our own as a substitute for theirs. We are asked what we would do in this difficult emergency. It is a question not difficult to answer. I for one am ready to answer it.

1. I would declare now that we will not take these islands to govern them against their will.

2. I would reject a cession of sovereignty which implies that sovereignty may be bought and sold and delivered without the consent of the people. Spain had no rightful sovereignty over the Philippine Islands. She could not rightfully sell it to us. We could not rightfully buy it from her.

3. I would require all foreign governments to keep out of these islands.

4. I would offer to the people of the Philippines our help in maintaining order until they have a reasonable opportunity to establish a government of their own.

5. I would aid them by advice, if they desire it, to set up a free and independent government.

6. I would invite all the great powers of Europe to unite in an agreement that that independence shall not be interfered with by us, by themselves, or by any one of them without the consent of the others. As to this I am not sure. I should like quite as well to tell them it is not to be done whether they consent or not.

7. I would declare that the United States will enforce the

same doctrine as applicable to the Philippines that we declared as to Mexico and Haiti and the South American Republics. It is true that the Monroe Doctrine, a doctrine based largely on our regard for our own interests, is not applicable either in terms or in principle to a distant Asiatic territory. 5 But undoubtedly, having driven out Spain, we are bound, and have the right, to secure to the people we have liberated an opportunity, undisturbed and in peace, to establish a new government for themselves.

8. I would then, in a not distant future, leave them to 10 work out their own salvation, as every nation on earth, from the beginning of time, has wrought out its own salvation. Let them work out their own salvation, as our ancestors slowly and in long centuries wrought out theirs; as Germany, as Switzerland, as France, in briefer periods, wrought out theirs; 15 as Mexico and the South American Republics have accomplished theirs, all of them within a century, some of them within the life of a generation. To attempt to confer the gift of freedom from without, or to impose freedom from without on any people, is to disregard all the lessons of history. It is 20 to attempt

A gift of that which is not to be given

By all the blended powers of earth and heaven.

9. I would strike out of your legislation the oath of allegiance to us, and substitute an oath of allegiance to their own 25 country.

Mr. President, if you once get involved and entangled in this policy of dominion and empire, you have not only to get the consent of three powers — House, Senate, and President — to escape from it, but to the particular plan and scheme and 30 method of such escape.

My friends say they are willing to trust the people and the future. And so am I. I am willing to trust the people as our fathers trusted them. I am willing to trust the people as they have, so far, trusted themselves; a people regulated, 35

governed, constrained by the moral law, by the Constitution and by the Declaration. It is the constitutional, not the unconstitutional, will of the American people in which I trust. It is Philip sober and not Philip drunk to whom I am willing to commit the destiny of myself and my children. A people without a constitution is, as I just said, like a man without a conscience. It is the least trustworthy and the most dangerous force on the face of the earth. The utterances of these gentlemen, who, when they are reminded of moral and constitutional restraints, answer us that we are timid, and that they trust the people, are talking in the spirit of the French, not of the American Revolution; they are talking in the spirit which destroys republics, and not in the spirit that builds them; they are talking in the spirit of the later days of Rome, of the later days of Athens, and not in the spirit of the early days of any republic that ever existed on this side of the ocean or on the other.

I love and trust the American people. I yield to no man in my confidence in the future of the Republic. To me the dearest blessings of life, dearer than property, dearer than home, dearer than kindred, are my pride in my country and my hope for the future of America. But the people that I trust is the people that established the Constitution and which abides by its restraints. The people that I trust is the people that made the great Declaration, and their children, who mean forever to abide by its principles. The country in whose future I have supreme and unbounded confidence is the Republic, not a despotism on the one hand, or an unchecked and unlicensed democracy on the other. It is no mere democracy. It is the indissoluble union of indestructible states. I disavow and spurn the doctrine that has been more than once uttered by the advocates of this policy of imperialism on the floor of the Senate, that the sovereignty of the American people is inferior to any other because it is restrained and confined within constitutional boundaries. If that be true, the limited

monarchy of England is inferior to the despotism of Russia; if that be true, a constitutional republic is inferior to an unconstitutional usurpation; if that be true, a man restrained by the moral law, and obeying the dictates of conscience, is inferior to the reckless, hardened, unrestrained criminal.

5

I have failed to discover in the speech, public or private, of the advocates of this war, or in the press which supports it and them, a single expression anywhere of a desire to do justice to the people of the Philippine Islands, or of a desire to make known to the people of the United States the truth of the case. Some of them, like the Senator from Indiana and the President of the Senate, are outspoken in their purpose to retain the Philippine Islands forever, to govern them ourselves, or to do what they call giving them such share in government as we hereafter may see fit, having regard to our own interest, and, as they sometimes add, to theirs. The others say, "Hush! We will not disclose our purpose just now. Perhaps we may," as they phrase it, "give them liberty sometime. But it is to be a long time first."

20

The catchwords, the cries, the pithy and pregnant phrases of which all their speech is full, all mean dominion. They mean perpetual dominion. When a man tells you that the American flag must not be hauled down where it has once floated, or demands of a shouting audience, "Who will haul it down?" if he mean anything, he means that that people shall be under our dominion forever. The man who says, "We will not treat with them till they submit; we will not deal with men in arms against the flag," says, in substance, the same thing. One thing there has been, at least, given to them as Americans not to say. There is not one of these gentlemen who will rise in his place and affirm that if he were a Filipino he would not do exactly as the Filipinos are doing; that he would not despise them if they were to do otherwise. So much, at least, they owe of respect to the dead and buried

35

history — the dead and buried history, so far as they can slay and bury it — of their country.

Why, the tariff schemes which are proposed are schemes in our interest and not in theirs. If you propose to bring tobacco from Porto Rico or from the Philippine Islands on the ground that it is for the interest of the people whom you are undertaking to govern, for their best interest to raise it and sell it to you, every imperialist in Connecticut will be up in arms. The nerve in the pocket is still sensitive, though the nerve in the heart may be numb. You will not let their sugar come here to compete with the cane sugar of Louisiana or the beet sugar of California or the Northwest, and in determining that question you mean to think, not of their interest but of yours. The good government you are to give them is a government under which their great productive and industrial interests, when peace comes, are to be totally and absolutely disregarded by their government. You are not only proposing to do that, but you expect to put another strain on the Constitution to accomplish it.

Why, Mr. President, the atmosphere of both legislative chambers, even now, is filled with measures proposing to govern and tax these people for our interest, and not for theirs. Your men who are not alarmed at the danger to constitutional liberty are up in arms when there is danger to tobacco. As an eloquent Republican colleague said elsewhere, "Beware that you do not create another Ireland under the American flag." Beware that you do not create many other Irelands — another Ireland in Porto Rico; another Ireland in Cuba; many other Irelands in the Philippines! The great complaint of Ireland for eight centuries was that England framed her taxation and regulated her tariff, not for Ireland's interest, but for her own; that when she dealt with the great industries of that beautiful isle she was thinking of the English exchequer and of the English manufacturer and of the English landowner; and she reduced Ireland to beggary. Let us not repeat that process.

Certainly the flag should never be lowered from any moral field over which it has once waved. To follow the flag is to follow the principles of freedom and humanity for which it stands. To claim that we must follow it when it stands for injustice or oppression is like claiming that we must take the 5 nostrums of the quack doctor who stamps it on his wares, or follow every scheme of wickedness or fraud, if only the flag be put at the head of the prospectus. The American flag is in more danger from the imperialists than it would be if the whole of Christendom were to combine its power against it. 10 Foreign violence at worst could only rend it. But these men are trying to stain it.

It is claimed — what I do not believe — that these appeals have the sympathy of the American people. It is said that the statesman who will lay his ear to the ground will hear 15 their voice. I do not believe it. The voice of the American people does not come from the ground. It comes from the sky. It comes from the free air. It comes from the mountains where liberty dwells. Let the statesman who is fit to deal with the question of liberty or to utter the voice of a free 20 people lift his ear to the sky — not lay it to the ground.

Mr. President, it was once my good fortune to witness an impressive spectacle in this chamber, when the Senators answered to their names in rendering solemn judgment in a great State trial. By a special provision each Senator was 25 permitted, when he cast his vote, to state his reason in a single sentence. I have sometimes fancied that the question before us now might be decided, not alone by the votes of us who sit here to-day, but of the great men who have been our predecessors in this chamber and in the Continental Congress from 30 the beginning of the Republic.

Would that that roll might be called! The solemn assembly sits silent while the Chair puts the question whose answer is so fraught with the hopes of liberty and the destiny of the Republic.

The roll is called. George Washington: "No. Why should we quit our own, to stand on foreign ground?"

Alexander Hamilton: "No. The Declaration of Independence is the fundamental constitution of every state."

Thomas Jefferson: "No. Governments are instituted among men deriving their just powers from the consent of the governed. Every people ought to have that separate and equal station among the nations of the world to which the laws of nature and nature's God entitle them."

John Adams: "No. I stood by the side of Jefferson when he brought in the Declaration; I was its champion on the floor of Congress. After our long estrangement, I came back to his side again."

James Madison: "No. The object of the federal Constitution is to secure the union of the thirteen primitive states, which we know to be practicable, and to add to them such other states as may arise in their own bosoms or in their neighborhood, which we cannot doubt will be practicable."

Thomas Corwin: "No. I said in the days of the Mexican War: 'If I were a Mexican, as I am an American, I would welcome you with bloody hands to hospitable graves;' and Ohio to-day honors and loves me for that utterance beyond all her other sons."

Daniel Webster: "No. Under our Constitution there can be no dependencies. Wherever there is in the Christian and civilized world a nationality of character, then a national government is the necessary and proper result. There is not a civilized and intelligent man on earth that enjoys satisfaction with his condition if he does not live under the government of his own nation, his own country. A nation cannot be happy but under a government of its own choice. When I depart from these sentiments I depart from myself."

William H. Seward: "No. The framers of the Constitution never contemplated colonies or provinces at all: they contemplated states only; nothing less than states — perfect states,

equal states, sovereign states. There is reason, there is sound political wisdom, in this provision of the Constitution — excluding colonies, which are always subject to oppression, and excluding provinces, which always tend to corrupt and enfeeble and ultimately to break down the parent state.” 5

John Marshall: “No. The power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement. A war declared by Congress can never be presumed to be waged for the purpose of conquest or the acquisition of territory, nor does the law declaring the war imply an authority to the President to enlarge the limits of the United States by subjugating the enemy’s country.” 10

John Quincy Adams: “No. The territories I helped bring into the nation were to be dwelt in by free men and made into free states.” 15

Aaron Burr: “Yes. You are repeating my buccaneering expedition down the Mississippi. I am to be vindicated at last!”

Abraham Lincoln: “No. I said in Independence Hall at Philadelphia, just before I entered upon my great office, that I rested upon the truth Thomas Jefferson has just uttered, and that I was ready to be assassinated, if need be, in order to maintain it. And I was assassinated in order to maintain it.” 20

Charles Sumner: “No. I proclaimed it when I brought in Alaska. I sealed my devotion with my blood also. It was my support and solace through those many long and weary hours when the red-hot iron pressed upon my spine, the very source and origin of agony, and I did not flinch. He knows our country little, little also of that great liberty of ours, who supposes that we could receive such a transfer. On each side there is impossibility. Territory may be conveyed, but not people.” 25 30

William McKinley: “There has been a cloud before my vision for a moment, but I see clearly now; I go back to what I said two years ago: ‘Forcible annexation is criminal aggres- 35

sion; governments derive their just powers from the consent of the governed, not some of them, but of all of them.' I will stand with the Fathers of the Republic. I will stand with the founders of the Republican party. No."

Mr. President, I know how imperfectly I have stated this 5 argument. I know how feeble is a single voice amid this din and tempest, this delirium of empire. It may be that the battle for this day is lost. But I have an assured faith in the future. I have an assured faith in justice and the love of liberty of the American people. The stars in their courses 10 fight for freedom. The Ruler of the heavens is on that side. If the battle to-day go against it, I appeal to another day, not distant and sure to come. I appeal from the clapping of hands and the stamping of feet and the brawling and the shouting to the quiet chamber where the Fathers gathered in 15 Philadelphia. I appeal from the spirit of trade to the spirit of liberty. I appeal from the Empire to the Republic. I appeal from the millionaire, and the boss, and the wire-puller, and the manager, to the statesman of the elder time, in whose eyes a guinea never glistened, who lived and died poor, and who left 20 to his children and to his countrymen a good name, far better than riches. I appeal from the Present, bloated with material prosperity, drunk with the lust of empire, to another and a better age. I appeal from the Present to the Future and to the Past.

QUESTIONS FOR ANALYSIS

1. *The Speech of Senator Beveridge*

301. Compare the opening paragraphs of this speech with the beginning of the speech of Mr. Lincoln, p. 259. How can you account for the difference?

301, lines 1-25. Compare this passage with Cass's argument, p. 211.

301, 8-20. Study the sentence structure in this paragraph.

302, 26 ff. "Who can estimate her commerce then—" What kind of reasoning? Test the soundness of it.

303, 16 ff. "But if they did not command China—" What kind of evidence?

304, 9 ff. "The mineral wealth—" Would this evidence be admitted in a court of law?

304, 19 ff. "Spain's export and import—" What kind of reasoning?

305, 7 ff. "If we are willing to go to war—" What kind of reasoning? Test it as an argument.

305, 13 ff. "The climate is the best tropic—" What is the appeal in this passage?

308, 27 ff. "For there is every reason to believe—" What kind of argument?

311, 25 ff. "Such a government will have its effect on us here—" Is the argument sound?

312, 17 ff. "Mr. President, self-government and internal development—" Is this statement warranted?

313, 19, 20 ff. "And you, who say—" What kind of argument?

313, 33 ff. "If any form of government—" Analyze the soundness of the position.

320, 20 ff. "What shall history say—?" Analyze the elements of appeal.

320 ff. Compare the effectiveness of this ending with the closing paragraphs of the preceding speeches.

2. *The Speech of Senator Hoar.*

325 ff. Compare the opening paragraphs with the opening paragraphs of the opposing speech. Note the effectiveness and the attitude and character of the speaker.

325, 22 ff. What use is made of these historical facts? Is the material relevant?

330, 13 ff. "In dealing with this question—" Does Senator Hoar fulfill the promise as to proof?

331, 11-32. Is there an attempt to prejudice by the wording of the questions?

330, 24 ff. Does Senator Hoar's constitutional argument seem to be sound? Has he refuted Beveridge's argument? (See Cons., Art. I, Sec. 8, Clause 18; Art. IV, Sec. III, clause 2.)

334, 31 ff. "In the present—" Is the argument sound?

339, 31 ff. "I affirm that you cannot get by conquest—" Test this argument.

341, 14 ff. Is Senator Hoar's definition of international law sound?

342, 27. "But why multiply citations—" What kind of argument follows?

343, 19 ff. "There is one question I should like to put—" What is the purpose of the long argument?

349, 19 ff. Test Senator Hoar's definition of a nation.

351, 4 ff. "There are 1200 islands—" Is there a fallacy in the argument?

354, 33 ff. Is this argument?

356, 10 ff. Did the burden of suggesting a plan fall upon the speaker?

358, 18 ff. "I love and trust the American people—" What is accomplished by this appeal?

359, 30 ff. "One thing there has been—" Is this effective? Classify it.

362-364. Is this argument?

364. Note the force of Senator Hoar's dramatic close.

Compare the two speeches for sentence structure.

Compare the argumentative value of the long and short sentences.

Compare this debate with the Henry-Madison debate in

a. Points of style.

b. Unity.

c. Digression.

d. Proportion.

e. Effectiveness.

VI. INCOME-TAX CASE OF 1895

(*Pollock v. Farmers' Loan and Trust Company* ¹)

The first income-tax act was passed by Congress in 1862 as a Civil War measure, and was amended in 1864, 1865, and 1867. By the act of 1867 a tax of five per cent was levied on all incomes above \$1000 a year. The constitutionality of this law was questioned in the case of *The Collector v. Day*, 5 11 Wall. 113, when a probate judge of Massachusetts refused to pay the tax. The Supreme Court held that Congress could not impose a tax upon the salary of a judicial officer of a state.

By an act of 1870 the rate was changed to two and 10 one-half per cent on incomes above \$2000 a year, and the law was made to comply with the decision in *Collector v. Day*. This law of 1870 was held to be constitutional in the case of *Springer v. U. S.*, 102 U. S. 586, in which the court sustained an unapportioned tax on incomes. All these 15 laws expired either as a result of court decisions or by operation of the law itself.

Again in 1894 Congress enacted an income-tax law. It provided in substance that a tax of two per cent be levied upon gains, profits, or income derived from any kind of 20 property, rents, interests, dividends, or from any source whatsoever, over and above \$4000 a year. The law excluded from its operation states, counties, municipalities, charitable, religious, and educational institutions, mutual insurance companies, building and loan associations, savings banks 25 conducted on the mutual plan, and, in order to avoid the effect of the decision in the case of *Collector v. Day*, the incomes of all state, county, and municipal officers.

¹ By permission of the Lawyers' Co-operated Publishing Company.
157 U. S. 429.

The constitutionality of this act was immediately made an issue in the cases of *Pollock v. Farmers' Loan and Trust Company*, *Hyde v. Continental Trust Company*, and *Moore v. Miller*, the three being considered together.

The bill was filed by the plaintiff, a stockholder in the defendant company, in behalf of himself and all other stockholders, to prevent the defendant Trust Company from filing reports as to incomes and property which it controlled. 5

The case was argued at length by distinguished counsel and the issues were closely drawn. The judges were divided upon the question of the constitutionality of the law, but finally, after notable and exhaustive opinions, they decided by a vote of five to four that the act of 1894 was unconstitutional. 15

The Springer case was thus overruled, and the power of Congress to enact a valid income-tax law has since been a doubtful question.

In 1909 a proposed constitutional amendment was submitted to the state legislatures providing that Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportioning among the several states according to population, and without regard to any census or enumeration. This proposed amendment is still under consideration by the various state legislatures. 20

ARGUMENT OF JAMES C. CARTER IN SUPPORT OF THE CONSTITUTIONALITY OF THE ACT

There are in the Constitution, aside from those provisions which protect persons or property, under particular circumstances, from taxation, but two expressed limitations on the exercise of the power (directly conferred in the broadest terms) to lay all manner of taxes. One is, that "direct taxes shall be apportioned among the several states . . . according to their respective numbers" (Art. 1, Sec. 2). The other is, that "all duties, imposts, and excises shall be uniform throughout the United States." So far as respects the contention sought to be made that the taxes imposed by the Act of 1894, or any part of them, are direct taxes, and invalid because not apportioned, the question is not open to debate. It was finally determined by this court, and upon grounds which have received its repeated assent.

Springer v. United States, 102 U. S. 586; *Scholey v. Rew*, 90 U. S. (23 Wall.) 331; *Veazie Bank v. Fenno*, 75 U. S. (8 Wall.) 533; *Pacific Ins. Co. v. Soule*, 74 U. S. (7 Wall.) 433; *Hylton v. United States*, 3 U. S. (3 Dall.) 171.

This question as to the meaning of the term "direct taxes" was first considered in the case last above cited, *Hylton v. United States*. It was then admitted to be an obscure and doubtful term; but the four judges who gave opinions were inclined to the belief that it embraced only capitation taxes and taxes on lands. There was a suggestion by one of them that, possibly, taxes upon personal estates generally might be embraced. Three of the judges then occupying places on the bench, and two of those delivering opinions, were distinguished members of the Convention which framed the Constitution. Congress itself, in a series of legislative acts beginning with

the year 1798, confirmed this interpretation by apportioning among the states capitation taxes and taxes upon lands. It has never apportioned any other taxes, except those on slaves, which were evidently treated as real estate.

Veazie Bank v. Fenno, supra.

Every judicial utterance and every opinion by text writers since that time have concurred in the correctness of this interpretation. *Mr. Chief Justice Chase*, in the case last above cited, indulged the conjecture above mentioned that possibly taxes upon personal estate generally might have been then regarded as direct taxes. To attempt at this late day to revise and reverse this unanimity of opinion without the aid of new historical light would be an extreme folly.

The Constitution was not framed by political economists, nor with any view to the special doctrines of political economy. Nor had political economy at that time, nor has it yet, succeeded in forming a classification of taxes as being direct or indirect. Upon few subjects is there a greater variety of opinion than upon that of the incidence of taxation. To suppose that the framers of the Constitution adopted a classification of taxes upon a basis which few of them understood, and as to which there was no agreement among the best informed, would be very irrational. The safest mode of exposition is to scrutinize the various parts of the Constitution itself and consider these in connection with the known views and purposes of its framers upon the main question which engaged their attention. The great object of all was to prevent the imposition of undue burdens upon their respective states; and to that end to inquire that some should be apportioned and others be made uniform throughout the nation. With these considerations in mind we shall find that to a certain extent the true meaning of this term is expounded by the clauses in which it is employed. "Direct taxes" were required to be apportioned among the states according to their respective numbers, that is, populations. They were such

taxes, therefore, as, in the view of the framers of the Constitution, had direct reference to population, and ought in justice and equity to be imposed according to the population. And they stood opposed in this respect to "duties," "imposts," and "excises," which were to be "uniform throughout the 5 United States."

Surely, an income tax of any description is not a tax which the framers of the Constitution could have contemplated as one which ought to be apportioned among the states according to population. 10

This consideration of itself was justly declared in *Pacific Ins. Co. v. Soule*, 74 U. S. (7 Wall.) 433, 446, as fatal to the proposition asserted by the appellants.

A narrower charge is made in the bill, not affecting the whole tax, but the tax on rents of land *eo nomine*. These, it 15 is insisted, are tantamount to a tax on the land itself, and are, therefore, within the interpretation approved by this court, direct taxes which should be apportioned. This position cannot be maintained. In the first place, the objection cannot now be raised. Rents of land were income taxable under the former 20 income-tax laws, although not expressly mentioned. All income was taxed, and the question should be deemed settled by the decisions upon those laws. Taxes upon rents are not taxes upon the land. All land is not reached by them. Where the product of land only suffices to pay for the labor and ex- 25 pense of cultivating, then there is no rent, and, of course, none on uncultivated lands. At the time of the adoption of the Constitution there was very little land that would bring a rent, if any. A tax on lands reaches all lands productive or unproductive; but a tax on rents, at the time in question, 30 would reach but a small part of them. Moreover, a tax on rents does not fall necessarily or generally upon the person from whom it is demanded, — that is, upon the landowner, — and is not therefore a direct tax.

But the complainants, evidently conscious that any attack 35

on the validity of the tax as being a direct tax and not apportioned, must be dismissed as an attempt to revive a controversy long since settled, put their main contention upon the only other point upon which the Constitution permits the general validity of the tax to be questioned, and assert that the tax, if not a direct one, is invalid because it is not uniform throughout the United States. Their contention in this respect must be dismissed. In the first place, the complainants do not assert that the tax is a "duty," or "impost," or "excise," which alone are required by the Constitution to be uniform throughout the United States. There may be taxes which on the one hand are not "direct taxes" within the meaning of the Constitution, nor, on the other, "duties," "imposts," or "excises." If our income tax is such a tax, the objection that it is not uniform is to no purpose, so far, at least, as the express constitutional requirement is concerned.

But the complainants' real interpretation of this constitutional provision — not indeed the avowed one, but the one which the structure of this bill requires, and which must therefore be imputed to them—goes rather beyond the mere ignoring of the words "throughout the United States." It substantially asserts that the meaning of the constitutional provision is the same as if it had been written "uniform in every particular," for the bill assumes that the tax will be invalidated if it be shown that it is not uniform in every particular, either in respect to "property, class, or subject." The answer to this fallacious reasoning, if it deserve an answer, is to point out that the question for solution is not the meaning of "uniform" standing alone and by itself, for it has many different meanings; but the meaning of the language, "uniform throughout the United States." When the question is thus stated, it is seen to be no question at all. The Constitution becomes its own very plain interpreter. It means just what it says, namely, that "duties, imposts, and excises" must be of uniform operation throughout the United States; that is, that there should

be no difference of plan or methods in different states. If this interpretation were not plain and compulsory on its face, and stood in need of support from extraneous sources, such support may be found in abundance. We know very well from history that the framers of the Constitution did not intend to limit Congress in the exercise of the powers expressly conferred upon that body except for one purpose and in one direction. They knew that any attempt to limit the powers of a sovereign government would be pregnant with the greatest mischief. Upon one point only did they have any serious apprehensions; and this was that the autonomy and welfare of some, or of some one, of the states might be prejudiced by any adverse majority resulting from a combination of the representatives of others. This was an ever-present fear. It was the motive which secured an apportionment of direct taxes. The same care, therefore, was exhibited that these should not be apportioned, but should be "uniform throughout the United States."

But the Constitution itself, and other documents having a close connection with it, furnish further light. The 4th clause of section 8, of Article 1, confers power upon the Congress to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States. No one will think that this requires that all foreigners should have the privilege of naturalization, if it were given away to any, or that certain conditions might not be required as to some, and others as to others; or that, if any insolvents were to be declared bankrupts, all insolvents must be so declared; or that Congress did not possess ample power to deal with the subjects of bankruptcy and naturalization in any manner it saw fit, provided the laws it enacted were uniform in their operation throughout the United States.

The first direct impulse towards the formation of the Constitution came from the legislature of Virginia of January, 1786, which provided for the appointment of commissioners,

"who were to meet such as might be appointed by other states in the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situation and trade of the states; to consider how far a uniform system in their commercial relations may be necessary to their common interest and their permanent harmony," etc. No one will think that "uniform" in this resolution means anything less or more than uniform throughout the United States.

The argument of the complainants, and the theory upon which this bill is framed, are, that members of the Convention with these views, after bestowing upon Congress an unlimited power to lay any form of tax, good or bad, proceeded to enact, in relation to all "duties, imposts, or excises," but to no other taxes: (1) That none could be laid upon corporations without being at the same time laid upon individuals doing the same business; (2) That if the income of individuals generally were exempted up to a certain amount, the profits of corporations, so far as they constituted the incomes of individuals thus exempted, must also be exempted; (3) That if one man is taxed upon his income all must be, no exemptions being permitted, although such exemptions might be required by every consideration of justice and sound policy; (4) That no tax can be laid on successions to personal property unless they are at the same time laid on inheritances of realty; (5) That no gifts or inheritances can be taxed as against individuals without the same being taxed as against corporations, even charitable corporations; (6) That no distinctions can be made in an income tax according as it may be held by one individual or by several constituting one family, and divers other limitations and restrictions; and that they did all this by employing the single word "uniform." Surely this is imposing a service upon this one word which it has never before been called upon to perform.

And this notion of equality of burden, either absolute or

proportional, which the complainant would have us believe was intended by the word "uniform," happens to be attached to a class of taxes, "duties, imposts, and excises," the bulk of which consists of duties imposed upon consumable goods, either imported or domestic, as to which, from the very nature of the case, equality of distribution is absolutely impossible. They fall upon the consumers, whoever they happen to be, and without regard to ability to pay. 5

The notion upon which the complainants proceed is to gather together all instances in the income-tax law of difference and discrimination which Congress thought to be wise and just, but which complainants and others upon whom the burden is imposed think to be unjust, and charge them as being violations of that uniformity which the Constitution requires. This is trebly erroneous reasoning. The question as to the meaning of the requirement that duties, imposts, and excises must be uniform throughout the United States has been above discussed as if it were still an open one; but it can hardly be so considered. It has engaged the deliberate attention of this court and eminent text writers as well, and the view taken in this brief has been always accepted as the true exposition. 15

Edye v. Robertson ("Head-Money Cases"), 112 U. S. 580; *Miller*, Const. 240, 241; *Story*, Const. Sec. 957. Other authorities hereinbefore cited sustain the same view.

The impracticability and unreason, amounting to absurdity, of the different objections urged by the complainant against the law, would be of themselves a sufficient refutation of the theory upon which they are based. 25

The first objection is, that corporations are taxed without the benefit of the exemption of \$4000 made in the case of individuals. Now the reason upon which the policy of limiting small incomes proceeds is, that it is very undesirable to lower the standard of personal comfort among the poor, or among those with incomes which hardly suffice to support comfortable living. The class therefore does not in reality, and should 35

not in form, include corporations. They are not persons for such a purpose. The exemption of corporate incomes on such a ground would be an absurdity. The next objection is, that individuals having incomes of less than \$4000 are, when any part of it is derived from corporate dividends, really made, indirectly, to endure some burden of taxation, while others, none of whose income is thus derived, escape altogether. Such views, whenever courts have been called upon to consider them, have been pronounced with unanimity to be unreasonable to the point of absurdity.

The next objection is, that the tax is imposed only on two per centum of the whole population of the country, leaving the remaining ninety-eight per centum wholly untaxed, although they hold the greater part of all the property, real and personal, in the United States. The next objection is, that the succession or inheritance tax is limited to personal estate, and does not embrace real property. He does not question the wisdom of this discrimination, but denies the constitutional power to make it. Now if classes of persons, objects, and subjects for the purposes of taxation do not exist unchangeably in the nature of things, or in constitutional definition, what body is to make them, and upon what principles are they to be framed? There is but one answer to this question, and that is that the power is a legislative one, fully and completely lodged in Congress.

The classes should be wisely, justly, and equitably framed; but the community has no other mode of gaining this object, except to intrust the effort to gain it to the legislative body. The result of legislative action is final: if wise, the people should be grateful; if unwise, there is no help for it, except in future legislative action.

The next objection is, that the tax on inheritances is unconstitutional, because it does not extend to those made to corporations; and also because it is not perpetual, but limited to those taking place during the pendency of the act. What

possible foundation there may be for the latter objection is not imagined even. The first has been sufficiently answered.

The next objection is, that the salaries of state, county, and municipal officers are exempted, also charitable corporations, also savings banks and mutual loan associations and other corporations of similar character and purposes, and income from bonds of the United States. One would suppose that the purpose of these specifications was to render the complainants' attack on the law ridiculous in every direction. The first exemption embraces only incomes which the United States had no power to tax, as has been fully decided; the next, those incomes which on the plainest reasons of public policy should be relieved from direct taxation; the next, those sources of income which it might with reason be claimed the government had contracted not to tax. The complainants proceed to insist that the law is void because it imposes a tax on incomes derived from the stocks and bonds of the states, counties, and municipalities. But the power of borrowing money certainly is not necessary to the existence of the states; and, if it were, it cannot be destroyed, or its efficiency impaired or endangered. The objection would equally apply to all taxation of property by the United States. The fact that an income has been received before the law took effect does not destroy its effectiveness as a test of ability to pay a tax.

CLOSING ARGUMENT OF JOSEPH H. CHOATE AGAINST THE CONSTITUTIONALITY OF THE ACT

I can add nothing to the wealth of argument, the force and power of the claim that was presented by my two distinguished associates, namely, that this tax is wholly void because absolutely in all parts a direct tax not imposed by the rule of apportionment. But, if the court please, we may distrust, in view 5 of the former decisions of this court, the willingness of the court to come to such a conclusion as that an income tax in all its extent, levied upon all callings, levied upon all earnings as well as upon the rents or the land and the income of personal property, is, in the meaning of the Constitution, a direct 10 tax. I, therefore, present the case as to direct taxes upon somewhat narrower grounds, grounds consistent with every case that has yet been decided by this court, grounds maintained by the uniform course of the federal government in its legislative capacity for over half a century after the adop- 15 tion of the Constitution.

If your honors should conclude that it is not possible to condemn this entire tax law as unconstitutional because entirely a direct tax, my purpose is to present, then, the only safe and practicable alternative upon which your honors can 20 place, as I believe, any decision, and which is based upon the clear distinction which we find in the Constitution itself, between direct taxes upon the one hand and duties, imposts, and excises upon the other. Therefore, for the purposes of this argument, I shall assume what my adversaries claim. I shall 25 assume that it may possibly be decided by this court, as it has so often been decided before, that all duties, all excises, all imposts are shut out from the class of direct taxes by the necessary meaning and effect of the Constitution, and that they are to be administered by the rule of uniformity, as they ought to 30

be in this law and are not. I shall claim, upon the other hand, that at any rate, so far as regards the direct, inevitable necessary income and outgrowth of real estate and of personal estate, the tax is a direct tax levied upon the proper subject of a direct tax within the meaning of the Constitution, and is 5 therefore invalid.

I desire to call attention to the rules regulating the power and the methods of exercising the power of taxation laid down in the Constitution, which are absolutely imperative upon Congress, and from which by no contrivance, by employing no 10 name, can it possibly escape. Under the provision of section 2 of Article I of the Constitution, it had already been declared that Representatives and direct taxes should be apportioned among the several states according to the census, according to numbers to be ascertained by an original census and by a 15 decennial census from time to time, as years rolled on. The framers had not yet, so far as concerns the arrangement of sections in the Constitution as it was finally drawn, given to Congress the general power to tax. That first provision was a restraint on what was intended to be given by a subsequent 20 clause, all of course finally speaking with one voice. Then the framers came to the first clause of the eighth section, which described the power of Congress, and naturally and necessarily gave to Congress plenary power of taxation, which might meet the exigencies, necessities, and demands of the 25 government at any period and under any stress. I agree with the learned Attorney-General that nothing could be more comprehensive; that no other language could be used to include the entire power of taxation which it was the evident, the obvious, the necessary purpose of the framers to 30 bestow upon the new government. "Congress shall have power to lay and collect taxes, duties, imposts, and excises." They added, however, to that clause, "but all duties, imposts, and excises shall be uniform throughout the United States," which I understand to mean exactly what it says — that all duties, 35

imposts, and excises shall be uniform duties, uniform imposts and excises throughout the United States.

The first question that suggests itself is, why these words added in that particular form—especially why the word “taxes” was included in the grant of power and excluded from this particular modification of it. I am not one of those who attribute ignorance or heedlessness or acting in the dark or in a maze to the men who, after sifting four months together, evolved this piece of work. I submit to your honors that upon every reasonable rule of construction, in view of the nature and character of those men, in view of the light of the history of the Confederation and of English history in which they were acting, they intended by their prescription of methods of exercising the power to cover absolutely the whole subject of taxation, and that the reason why the limitation as to uniformity, the prescription of method as to uniformity, was applied to duties, imposts, and excises was that the framers knew very well that they had already prescribed the measure for all other taxes under the term of direct taxes. Anything less than that would impute to them the ignorance, the heedlessness, the striking in the dark which, I think, one of the briefs on the part of the other side has imputed to them in this regard. They had known all about the struggles of English-speaking people in respect to taxation and resistance to taxation and the necessity of regulating taxation. There was not one of them to whom could be imputed ignorance of all that history had taught in that regard. So, I submit to your honors, it is a fair and necessary construction that the reason why the framers of the Constitution limited the provision of the method of uniformity for the measurement of taxes to duties, imposts, and excises was that they understood that they had already provided for the method for the measurement of all other taxes.

The income of all accumulated property, whether it be the rent of land or the interest of bonds or the immediate outgrowth of any other specific form of personal property, is nec- 35

ecessarily, under the Constitution, the subject of a direct tax and of no other. If I accomplish this proposition, it will not result in establishing the illegality upon that ground of all the provisions of this law. If those things which I mention can only be made the subject of an apportioned tax, it will make 5 avoid this tax so far as it rests upon rents and upon the income of personal property. By what method is this to be established? By exploring the misty areas of political economy, about which, however thoroughly informed your honors may be, I know next to nothing? I think not. I think it is to be 10 established and decided by the ordinary rules for the construction of statutes and constitutions. One thing is absolutely certain in this Constitution, and that is that the difference between the subjects of taxation by apportionment and taxation by the rules of uniformity was considered one of vast 15 importance by the framers of the Constitution. It was no trifling thing. They did not think either branch of this question of taxation inconsiderable or unimportant.

My proposition is that real estate itself and the rent of it, 20 the bulk of personal property and the income from it, was 2 what was in their minds under the subject of direct taxation. How do I ascertain that? I say, by comparing and studying these clauses of the Constitution which I have already quoted and the other clauses of the Constitution and the whole scope and purpose of them. The mere talk of this man or that in 25 the Convention, mere talk of this man or that on the bench of any court, unless it was a solemn adjudication upon this oath of office and the decision of a case, is of very little weight.

I have found from a careful study of it very little help upon this subject in the debates of the federal Convention, and I 30 think there are two reasons why no conclusive force, as Justice Swayne said in the Springer case, can be drawn from them. In the first place, it was not a legislative body; it was merely a deliberate body, coming voluntarily together at the invitation of Virginia and of Congress, submitting its work to Con- 35

gress with a suggestion that it finally be submitted for adoption to the conventions of the several states. In the second place, its deliberations were absolutely secret.

The first step which I take as a starting point of my argument in support of the proposition that I am submitting is that, whatever else was or was not included in the term "direct tax," real estate was included, real estate in the several states, real estate that was distributed equally everywhere, found everywhere, in every state, although necessarily differing in value and differing in acreage. From the beginning, the power to tax land does not rest upon theories of distinctions between the increment of land, the improvement of land, and the growth of value of land; but it applies, according to such practical construction, to improved and unimproved real estate. There have been three cases of direct tax, which has never been imposed except in cases of great emergency: first, there was the direct tax law of 1798, when trouble with France was apprehended; then the land tax of 1812, and the direct tax of 1861. All were of one type. They were not taxes on naked land; they were taxes arranged carefully upon improved and upon unimproved property, just as a land tax, if you please to call it so, which is a direct tax, may now be imposed upon rented property and unrented and unproductive property. What did Congress do? Take the first tax as a specimen of them all. It said, first, we will tax the houses. That is improved real property, is it not? That is rented real property, is it not? It taxed them according to their value, from \$3000, ranging all the way up to \$30,000 at a differing rate. Then we will tax the slaves so much a head. I think it was fifty cents a head. Then we will tax all the rest of the land a dollar for a hundred acres, or whatever the rule was. So, I say, there is an absolute consensus, confirmed by these hundred years of history, that a direct tax upon land was not a purely naked land tax, but it was a tax, as I have said, upon all possible improvements or outgrowth of the property.

Now, we come to the second proposition, which, it seems to me, is equally easy to establish, and that is that the rent of real estate issuing from it is indistinguishable from a tax upon the real property itself. If the court please, as to this matter of rent, is a tax on rent distinguishable from a tax on land? I say that a tax on land, yielding income by whatever name, is in reality, in effect and substance, a tax upon the rental. I speak now, of course, of rented property. I am not foolish enough to argue that a tax on rents is the same thing as a tax on land which nobody rents. I am looking, however, at the nature of the tax; not the form, but the substance. Your honors will observe that the tax laid by this law is a yearly tax upon yearly rental. Can that be distinguished from a tax on land? How under heaven is a tax on land to be paid, except out of the income? How is it possible? I mean in the common, ordinary, practical business of life which the court is bound to look at. We are living under a constitutional government, are we not? We have regulated the measure of our own taxation by the Constitution. Was it intended that, although Congress could not put an unapportioned tax upon real estate, it could put an unapportioned tax upon rent of real estate and so eat all the real estate up? How can a man pay this five years' annual tax on real estate? Absolutely only out of the rental. Would any free people, if they had prohibited a land tax, submit to a tax on rentals?

We are deciding this as a question of law, not of political economy. I say that every time the courts ever passed upon the question of an annual tax on land, by whatever name you call it, whether you call it real-estate tax or a land tax or an income tax or whatever you please, it has been held to be a tax on the immediate ownership, upon the immediate freehold, and upon the man who is in possession thereof receiving the income.

Suppose the Constitution instead of forbidding an unapportioned direct tax had specifically forbidden any tax by Congress upon the real estate of any inhabitants of a state.

Let us see whether there is any difference between a tax upon the rent and a tax upon the body of the property. The Constitution has provided, we will assume, that Congress shall not levy any tax upon the real estate of any citizen of any state. Congress gets into a tight place and it says: "We want more money. We cannot levy a tax upon the real estate of any citizen, but we will put an annual tax for five years or for ten years or for twenty years upon the rental income of the real estate." Would anybody say that it was permissible to Congress under such a Constitution? As the Constitution now stands it is conceded that you cannot put an unapportioned tax on real estate, and yet my opponents claim, and it is necessary for them to claim, that you can nevertheless tax all the man's real estate away by an annual tax upon the rents. It is scarcely necessary for me to follow up the last suggestion by arguing that that proposition, if true as applied to the prohibition to levy any tax upon real estate, is equally true as to my proposition in regard to the prohibition to levy any unapportioned tax upon personal property.

What has been the law from the beginning of the common law? What do the old writers say? "If a man seised of land in fee by his deed granteth to another the profit of those lands to have and to hold to him and his heirs and maketh livery *secundum formam chartae*, the whole land itself doth pass. For what is the land but the profits thereof?" That is Coke upon Littleton. That has been law ever since in every court in English Christendom. It is applied now just the same as it was in the time of Coke. It was applied in the state of New York to the matter of a devise. "A devise of the interest or of the rents and profits is a devise of the thing itself, out of which that interest or those rents and profits may issue." That is the law as administered by the supreme court of the state of New York when your late associate, Mr. Justice Nelson, was a member of it.

A tax upon the profitableness of the use is, therefore, a tax

falling directly upon the value of the property. So I submit that a tax on rents is in substance a tax on real estate and should be made the subject of apportionment, as required by the Constitution in respect of all direct taxes.

How in principle does the corpus of personal property differ 5 from a piece of real estate? I own a house to-day and sell it to-morrow, and take as its consideration a mortgage on the same property for \$10,000, the value of the house. Is the tax upon the house one kind of a tax and a tax upon the proceeds of the house another? It cannot be; it is impossible. There 10 is no real or substantial difference between a general tax on personal and on real property. No such thing has ever been decided; no such thing has ever been hinted at. A tax on personalty has all the elements of a direct tax exactly as a tax on real estate. It is directly imposed; it is presently paid; it is 15 ultimately borne by the party owning it. There is no choice for him to escape from the tax but to run away. There is no volition about it, as there is in the case of any consumable commodities upon which excises are laid.

Suppose a direct tax be levied upon real and personal prop- 20 erty in the states, could a man whose personal property was touched by it appeal to the court with any hope of success and say, "That tax on my personal property is not a direct tax, but is an excise, or a duty, or an impost. I will pay on my real property, but I shall not pay, and I shall appeal to the 25 Supreme Court to free me from paying, the portion of the tax that rests upon my personal property." The court certainly would overrule such a contention. I say, there is not the least distinction between such a case and that presented here.

I think your honors will have no difficulty in coming to the 30 conclusion that the corpus of personal property is included within the subject of a direct tax, and that a tax thereon must be apportioned. How about the income derived therefrom? I am not speaking now, your honors, understand, of the earnings and incomes from labor, and from any calling, trade, pro- 35

fession, or business. I am talking about the direct income from personal property, as illustrated by the interest on bonds. Thus the United States issues certain bonds and declares that the bonds shall not be subject to taxation by any state. I am looking at the question whether a tax on the interest of the bonds is the same in nature as a tax on the bond itself. A state levies a tax. The legislature recognizes that the bond itself is protected and cannot be taxed; but it attempts to circumvent that inhibition by pretending to tax only the income after it has been collected, on the plea that it has lost its identity and is part of the personal property of the owner of the bond. Would you say that, although the act of Congress said the bond should not be subject to tax, all the income therefrom and all its value might be eaten out by the state putting a tax on the income of the bond? Of course that would be an impossibility, and it is decisive of this question. The substance is what the Constitution provides for. The substance of right is what the court is bound to protect.

[After thus arguing that the tax is, in part, a direct tax, and that it violates the rule of apportionment as provided in Article I, Section 2, Mr. Choate discusses the word "uniform," as used in Article I, Section 8, and shows that the tax violates the rule of uniformity.]

Now, what are the breaches of uniformity here? I shall treat them briefly, in view of the clear and remarkably forcible presentation on the opening by Mr. Guthrie. In the first place, there is this exemption of everybody with an income of less than \$4000. I might, by the way, find it wholly unnecessary to argue that this was class legislation, because my learned friend who last spoke said this is only a tax upon a few selected rich men, or as the government's representative puts it, on the upper class. I thought that every federal statute was one law for the rich and poor alike throughout the United States. Mr. Carter went further, and said that it was a law for a few extremely rich men. We are at the parting of the ways, if

your honors please. On the one side, there are all these constitutional guaranties, these fundamental principles which this people believed were wrapped up in the Constitution from the beginning, and on the other there is this new doctrine of this army of 60,000,000 — this triumphant and tyrannical majority 5 — who want to punish men who are rich and confiscate their property. What does this exemption really amount to? A man living with investments of \$133,000 in bonds at 3 per cent is a subject of exemption. I hope that we shall be able to leave our children each in as good condition as that, and not have 10 Congress claim that he or she should be classed among the lower middle classes because his or her income does not exceed \$4000. My friend on the other side has made our argument easier because he has said that this exemption might just as well have been \$20,000, and he said it in earnest. Thus he has 15 conceded that if this classification can stand, a man with \$666,000 at 3 per cent, or \$500,000 at 4 per cent, was a fit subject for exemption. It is therefore for you to decide whether that is a reasonable exemption.

Now, I come to another ground. It is not necessary for me 20 to dwell very elaborately on this, because of the very clear and forcible manner in which it was presented to you in the opening by Mr. Guthrie and appears upon our brief. I say, here was a deliberate, arbitrary, capricious (it is entitled to infinitely worse names and epithets than capricious or arbitrary) 25 exclusion of certain great and wealthy corporations from the operation of this law, without justification, without warrant, without any principle of public policy whatever. The Attorney-General says in respect to the exemption of those favored companies that there is a humane policy always acted on by civilized 30 states. It is very curious that these civilized states, the United States of America, did not discover it until now. None of these institutions were exempted under the previous income tax laws. Take Trinity Church, for example, in New York, with its hundreds of parcels of real property, of stores and 35

houses and millions of property from which it receives a fabulous income. Is there any public policy in exempting that income at the expense of the poorer sections of the country?

Mr. Justice Harlan: Do you mean to say that all this property is exempted?

5

Mr. Choate: It is, but it never was before. My learned friends will correct me if I am wrong. Take Columbia College, with acre upon acre of property yielding ground rent, and Harvard and Yale Colleges with their enormous revenues. We do not dispute, in this bill, the form of the exemption. It is not necessary for our purpose to attack the exemption of the wealthy institutions of the East, but we very greatly doubt the power or propriety of Congress taxing the people of Nebraska, Montana, and Dakota for the support of those institutions of New York, Connecticut, and Massachusetts. That is what this Act does. Are we not entering on most dangerous ground?

But I have more than trespassed upon your honors' kind indulgence. I have felt the responsibility of this case as I have never felt one before and never expect to again. I do not believe that any member of this court ever sat or ever will sit to hear and decide a case the consequences of which will be so far-reaching as this — not even the venerable member of this court who survives from the early days of the Civil War, and has sat upon every question of reconstruction, of national destiny, of state destiny, that has come up in this court during the last thirty years.¹ No member of this court will live long enough to hear a case which will involve a question of more importance than this, the preservation of the fundamental rights of private property and equality before the law and the ability of the people of these United States to rely upon the guaranties of the Constitution. If it be true, as my learned friend said in closing, that the passions of the people are aroused on this subject, if it be true that a mighty army of sixty million citizens is likely to be incensed by this decision, it is the

¹ Justice Stephen J. Field, appointed by President Lincoln in 1863.

more vital to the future welfare of this country that this court again resolutely and courageously declare, as Marshall did, that it has the power to set aside an act of Congress violative of the Constitution, and that it will not hesitate in executing that power, no matter what the threatened consequences of popular 5 or populist wrath may be. With the deepest earnestness and confidence we submit that all patriotic Americans must pray that our views shall prevail. We could not magnify the scope of your decision, whatever it may be. No mortal could arise above "the height of this great argument." 10

OPINION OF JUSTICE STEPHEN J. FIELD ¹

(In Part)

The law, so far as it imposes a tax upon land by taxation of the rents and income thereof, must therefore fail, as it does not follow the rule of apportionment. The Constitution is imperative in its directions on this subject, and admits of no departure from them.

5

But the law is not invalid merely in its disregard of the rule of apportionment of the direct tax levied. There is another and an equally cogent objection to it. In taxing incomes other than rents and profits of real estate it disregards the rule of uniformity which is prescribed in such cases by the Constitution. The eighth section of the first article of the Constitution declares that "the Congress shall have the power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; *but all duties, imposts, and excises shall be* 15 *uniform throughout the United States.*" Excises are a species of tax consisting generally of duties laid upon the manufacture, sale, or consumption of commodities within the country, or upon certain callings or occupations, often taking the form of exactions for licenses to pursue them. The taxes created by 20 the law under consideration as applied to savings banks, insurance companies, whether of fire, life, or marine, to building or other associations, or in the conduct of any other kind of business, are excise taxes, and fall within the requirement, so far as they are laid by Congress, that they must be uniform through- 25 out the United States.

The uniformity thus required is the uniformity throughout the United States of the duties, imposts, and excise levied.

¹ Mr. Justice Field was appointed to the Supreme Court bench by President Lincoln in 1863, and was the oldest member of the bench in 1895. The salient points in his strong concurring opinion are given in the following pages.

That is, the tax levied cannot be one sum upon an article at one place and a different sum upon the same article at another place. The duty received must be the same at all places throughout the United States, proportioned to the quantity of the article disposed of or the extent of the business done. If, for instance, one kind of wine or grain or produce has a certain duty laid upon it proportioned to its quantity in New York, it must have a like duty proportioned to its quantity when imported at Charleston or San Francisco; or if a tax be laid upon a certain kind of business proportioned to its extent at one place, it must be a like tax on the same kind of business proportioned to its extent at another place. In that sense the duty must be uniform throughout the United States.

It is contended by the government that the Constitution requires only a uniformity geographical in its character. That position would be satisfied if the same duty were laid in all the states, however variant it might be in different places of the same state. But it could not be sustained in the latter case without defeating the equality, which is an essential element of the uniformity required, so far as the same is practicable. 20

The income-tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. 25 Hamilton says in one of his papers (the *Continentalist*), "The genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the state demands; whatever liberty we may boast of in theory, it 30 cannot exist in fact while (arbitrary) assessments continue." (1 Hamilton's Works, ed. 1885, 270.) The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or 35

religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late Civil War had rendered such legislation impossible for all future time. 5 But the objectionable legislation reappears in the act under consideration. It is the same in essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and 10 constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater 15 regard for the government and more self-respect for himself, feeling that, though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, 20 they will ultimately triumph over all reverses of fortune.

There is nothing in the nature of the corporations or associations exempted in the present act, or in their method of doing business, which can be claimed to be of a public or benevolent nature. They differ in no essential characteristic in their 25 business from "all other corporations, companies, or associations doing business for profit in the United States." (Section 32, Law of 1894.)

But there are other considerations against the law which are equally decisive. They relate to the uniformity and equality 30 required in all taxation, national and state; to the invalidity of taxation by the United States of the income of the bonds and securities of the states and of their municipal bodies; and the invalidity of the taxation of the salaries of the judges of the United States courts.

As stated by counsel: "There is no such thing in the theory of our national government as unlimited power of taxation in Congress. There are limitations, as he justly observes, of its powers arising out of the essential nature of all free governments; there are reservations of individual rights, without 5 which society could not exist, and which are respected by every government. The right of taxation is subject to these limitations." *Citizens Sav. L. Asso. of Cleveland v. Topeka*, 87 U. S. (20 Wall.) 655, and *Parkersburg v. Brown*, 106 U. S. 487.

The inherent and fundamental nature and character of a tax 10 is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a tax.

This inherent limitation upon the taxing power forbids the 15 imposition of taxes which are unequal in their operation upon similar kinds of property, and necessarily strikes down the gross and arbitrary distinctions in the income law as passed by Congress. The law, as we have seen, distinguishes in the taxation between corporations by exempting the property of some 20 of them from taxation and levying the tax on the property of others when the corporations do not materially differ from one another in the character of their business or in the protection required by the government. Trifling differences in their modes of business, but not in their results, are made the ground and 25 occasion of the greatest possible differences in the amount of taxes levied upon their income, showing that the action of the legislative power upon them has been arbitrary and capricious and sometimes merely fanciful.

The law is also invalid in its provisions authorizing the tax- 30 ation of the bonds and securities of the states and of their municipal bodies. It is objected that the cases pending before us do not allege any threatened attempt to tax the bonds or securities of the state, but only of municipal bodies of the states. The law applies to both kinds of bonds and securities, 35

those of the states as well as those of municipal bodies, and the law of Congress we are examining being of a public nature, affecting the whole community, having been brought before us and assailed as unconstitutional in some of its provisions, we are at liberty, and I think it is our duty, to refer to other unconstitutional features brought to our notice in examining the law, though the particular points of their objection may not have been mentioned by counsel. These bonds and securities are as important to the performance of the duties of the state as like bonds and securities of the United States are important to the performance of their duties, and are as exempt from the taxation of the United States as the former are exempt from the taxation of the states. As stated by Judge Cooley in his work on the principles of constitutional law:

The power to tax, whether by the United States or by the states, is to be construed in the light of, and limited by, the fact, that the states and the Union are inseparable, and that the Constitution contemplates the perpetual maintenance of each with all its constitutional powers, unembarrassed and unimpaired by any action of the other. The taxing power of the federal government does not therefore extend to the means or agencies through or by the employment of which the states perform their essential functions, since, if these were within its reach, they might be embarrassed, and perhaps wholly paralyzed, by the burdens it should impose. 'That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, in respect to those very measures, is declared to be supreme over that which exerts the control, — are propositions not to be denied.' It is true that taxation does not necessarily and unavoidably destroy, and that to carry it to the excess of destruction would be an abuse not to be anticipated; but the very power would take from the states a portion of their intended liberty of independent action within the sphere of their powers, and would constitute to the state a perpetual danger of embarrassment and possible annihilation. The Constitution contemplates no such shackles upon the state powers, and by implication forbids them.

The law of Congress is also invalid in that it authorizes a tax upon the salaries of the judges of the courts of the United

States, against the declaration of the Constitution that their compensation shall not be diminished during their continuance in office. The law declares that a tax of two per cent shall be assessed, levied, and collected and paid annually upon the gains, profits, and income received in the preceding calendar year, by every citizen of the United States, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or *salaries*, or from any profession, trade, employment, or vocation, carried on within the United States or elsewhere, or from any source whatever. The annual salary of a justice of the Supreme Court of the United States is ten thousand dollars, and this act levies a tax of two per cent on six thousand dollars of this amount, and imposes a penalty upon those who do not make the payment or return the amount for taxation.

15

The Constitution of the United States provides in the first section of Article III that:

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, *which shall not be diminished during their continuance in office.*

The act of Congress under discussion imposes, as said, a tax on six thousand dollars of this compensation, and therefore diminishes, each year, the compensation provided for every justice. How a similar law of Congress was regarded thirty years ago may be shown by the following incident, in which the justices of this court were assessed at three per cent upon their salaries. Against this Chief Justice Taney protested in a letter to Mr. Chase, then Secretary of the Treasury, appealing to the above article in the Constitution, and adding:

If it [his salary] can be diminished to that extent by means of a tax, it may, in the same way, be reduced from time to time, at the pleasure of the legislature.

He explained in his letter the object of the constitutional inhibition thus:

The judiciary is one of the three great departments of the government created and established by the Constitution. Its duties and powers are specifically set forth, and are of a character that require it to be perfectly independent of the other departments. And in order to place it beyond the reach, and above even the suspicion, of any such influence, the power to reduce their compensation is expressly withheld from Congress *and excepted from their powers of legislation.* 5

Here I close my opinion. I could not say less in view of 10 questions of such gravity that go down to the very foundation of the government. If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger 15 and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness. "If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the Constitution," as said by one who has been all his life 20 a student of our institutions, "it will mark the hour when the sure decadence of our present government will commence."

If the purely arbitrary limitation of \$4000 in the present law can be sustained, none having less than that amount of income being assessed or taxed for the support of the government, 25 the limitation of future Congresses may be fixed at a much larger sum, at five or ten or twenty thousand dollars, parties possessing an income of that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of "walking delegates" 30 may deem necessary. There is no safety in allowing the limitation to be adjusted except in strict compliance with the mandates of the Constitution which require its taxation, if imposed by direct taxes, to be apportioned among the states according to their representation, and, if imposed by indirect 35

taxes, to be uniform in operation and, so far as practicable, in proportion to their property, equal upon all citizens. Unless the rule of the Constitution governs, a majority may fix the limitation at such rate as will not include any of their own number.

5

I am of opinion that the whole law of 1894 should be declared void and without any binding force — that part which relates to the tax on the rents, profits, or income from real estate, that is, so much as constitutes part of the direct tax, because not imposed by the rule of apportionment according to the representation of the states, as prescribed by the Constitution — and that part which imposes a tax upon the bonds and securities of the several states, and upon the bonds and securities of their municipal bodies, and upon the salaries of judges of the courts of the United States, as being beyond the power of Congress; and that part which lays duties, imposts, and excises, as void in not providing for the uniformity required by the Constitution in such cases.

NOTES AND SUGGESTED QUESTIONS

For a clear analysis and an able defense of the proposed constitutional amendment giving Congress the power to enact an income tax, the student is referred to a letter by Senator Elihu Root read in the senate and assembly of the New York legislature, Feb. 28, 1910. The letter was referred to the judiciary committee and ordered printed. Copies are therefore available.

1. *Argument of Mr. Carter*

371, 14 ff. Is the argument here sound?

369 to 373. Does Mr. Choate successfully refute the argument of these paragraphs?

In addition to the citations herein given, Mr. Choate also cited *Brown v. Maryland*, 25 U. S. 419; *McCulloch v. Maryland*,

17 U. S. 316, and *Weston v. Charleston*, 27 U. S., 449. Compare the cases cited on both sides.

372, 17 ff. What kind of argument is illustrated in this paragraph? Is it effective?

374, 10 to 375, 25. Is this a fair statement of the complainants' case?

375, 20. "The view taken in this brief has been always accepted as the true exposition." Test this statement. What kind of reasoning is it and to what error is it liable?

375, 25 ff. Note the attitude assumed. What is the tendency?

375, 29 ff. In view of the recent corporation tax law which exempts from its operation all corporations whose net income does not exceed \$5000, what can you say of this argument? Refute it.

376, 26 to 377, 2. Is there any argument in these paragraphs?

377, 3 ff. Does Mr. Choate refute the argument of this paragraph?

2. *Argument of Mr. Choate*

378, 2. "Two associates." Mr. W. D. Guthrie and Mr. Clarence A. Seward.

380, 33 to 382, 3. Mr. Choate here states the real issue.

383, 26 ff. "We are deciding this as a question of law," etc. What is the purpose of this remark? What kind of argument in this paragraph?

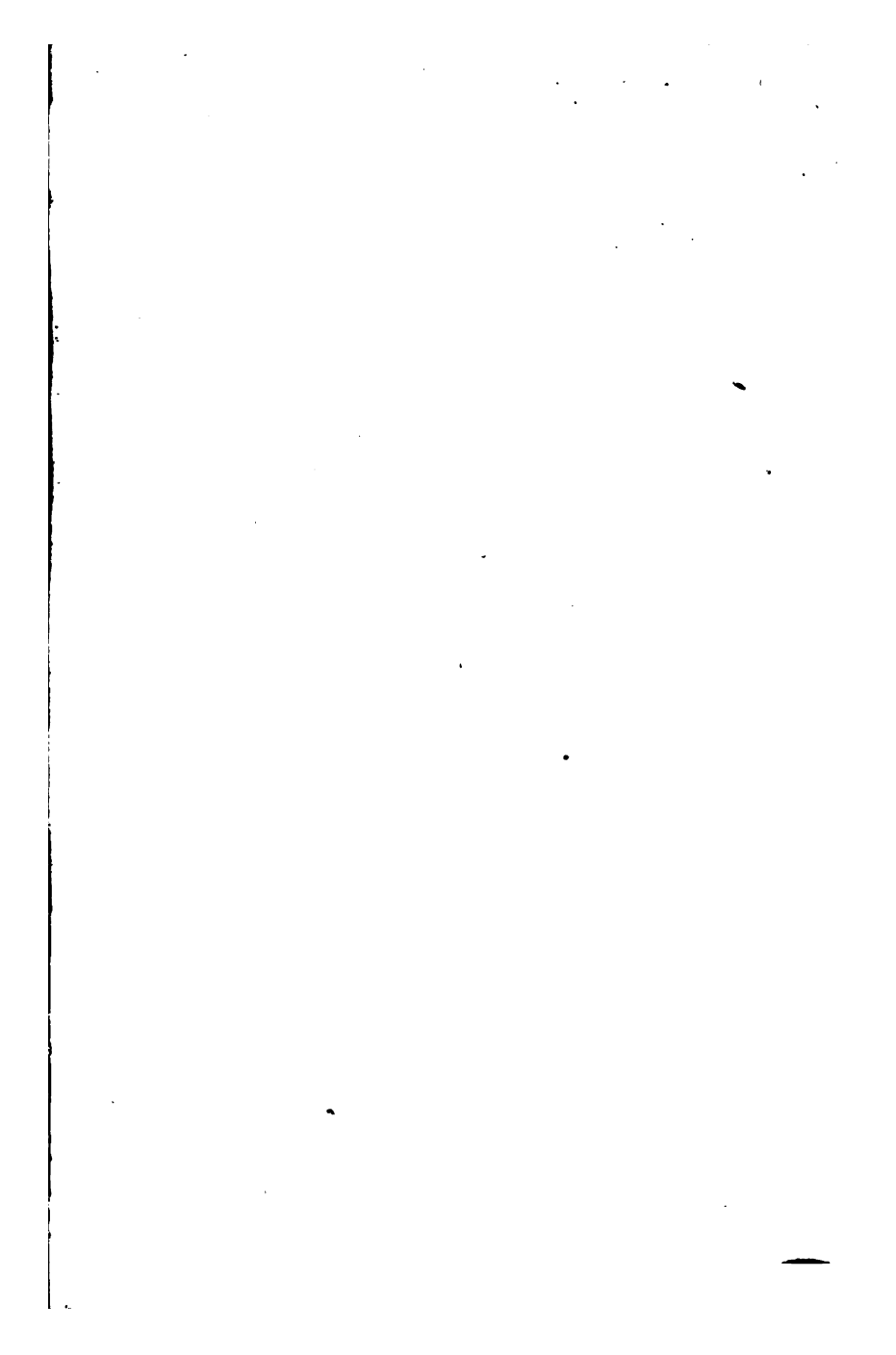
Compare the style of the two lawyers and the style of Mr. Justice Field.

Further details of the case may be found in the *Supreme Court Reports*, 157 U. S. 429 and 158 U. S. 60r.

INDEX

- A fortiori* reasoning, 82.
- A posteriori* reasoning, 78.
 - typical form, 80.
 - refutation of, 80.
- A priori* reasoning, 75.
 - a form of deduction, 76.
 - refutation of, 77.
- Absolute certitude, 51.
- Absurd, reduction to, 91.
- Admitted matter, 23.
- Analogy, argument from, 80.
- Analysis, legal, 28.
- Appeal to universal experience, 87.
- Arguing in a circle, 63.
- Argument from authority, 86.
- Argumentation, definitions, 19.
- Arrangement of material, 97.
- Baker, definition of argumentation, 19.
- Begging the question, 63.
- Beveridge-Hoar debate, 300.
- Block signal system, illustration, 15.
- Brief, 98-104.
- Brooks, Phillips, selection, 114.
- Burden of proof, 43.
- Calhoun-Cass debate, 196.
- Card system illustrated, 106.
- Carter-Choate debate, 367.
- Cass-Calhoun debate, 196, 211.
- Cause to effect reasoning, 75.
- Character in issue, 39.
- Choate-Carter debate, 367, 378.
- Circumstantial evidence, 36.
 - may be *a priori* or *a posteriori*, 79.
- Collecting material, 95.
- Competent evidence, 34.
- Compound sentence not a good proposition for debate, 18.
- Conclusion, 113.
- Conclusive evidence, 34.
- Conclusive presumption, 42.
- Conflict of opinions, 20.
- Courts, evidence in, 39.
- Cumulative evidence, 34.
- Debatable question, 17, 18.
- Deductive reasoning, 54.
 - refutation of, 65.
- Dilemma, 83.
- Douglas, introduction to Chicago speech, 111.
- Douglas-Lincoln debate at Alton, 240, 259, 287.
- Effect to cause reasoning, 78.
- Emotional appeal, 114.
- Equivocation, 64.
- Evasion of issue, 63.
- Evidence, 32.
 - definition of, 32.
 - kinds of, 34.
 - burden of, 43.
- Excluded matter, 24.
- Experience and proof, 32.
- Expert testimony, weakness of, 87.
- Expression of an argument, 109.
- Fact, presumption of, 41.
- Fairness of statement, 16.
- Fallacies of syllogism, 62-64.
- Fallacy of appeal to human experience, 88.
- False consequent, 64.
- Field, Justice, opinion on income-tax case, 390.
- General debate, rules of law applicable to, 40.
- General law, theory of case, 52.
- Generalization, basis for, 48.
- Generalization, power of, 54.
- Generalization, reached by induction, 55.
- Granted matter, 20.
- Guerrilla warfare in debate, 20.
- Hayne-Webster debate, 152.
- Henry-Madison debate, 120.

- Hoar-Beveridge debate, 300, 325.
 Hostile audience, overcoming, 112.
 Huxley on circumstantial evidence, 45.
 Huxley, Method of Scientific Investigation, 66.
 Identification of syllogism, 60.
 Illicit process, fallacy of, 64.
 Implicit belief, 33.
 Income-tax case, 367.
 Inductive reasoning, 48.
 kinds of, 49.
 Inductive assumption, 49.
 Inference, 51.
 value of, 52.
 refutation of, 53.
 Information, sources of, 14.
 Interpretation of terms, 13.
 Introduction to debate, outline of, 97.
 Irrelevant matter excluded, 24.
 Judicial notice, 40.
 application to debate, 41.
 Law, rules of, 40.
 Legal analysis, 28.
 Lincoln, refutation of Judge Douglas at Galesburg, 65.
 extract from Freeport speech, 90.
 introduction to speech at Columbus, Ohio, 111.
 Lincoln-Douglas debate at Alton, 240, 259, 287.
 Logic in debate, 48.
 Logical fallacies, 62.
 Madison-Henry debate, 120, 137.
 Magazines, use of, in argument, 15.
 Major premise, 56.
 Manner of presentation, 109.
 Material fallacies, 63-64.
 Material for argument, 95.
 Middle term, 56.
 Minor premise, 56.
 Modes of reasoning, 75.
 Moral certitude, 51.
 Negative premises, 61.
Non sequitur, 64.
 Parable, argument from analogy, 80.
 Perfect induction, 50.
 Personal argument, 89.
 excuse for, 90.
 Persuasion, 110.
 Prejudicial matter excluded, 25.
 Premises, major, middle, minor, 56.
 Presumptions, 41.
 of fact, 41.
 of law, 42.
 in general argument, 42.
Prima facie evidence, 32.
 Problem of argumentation, 11.
 Proof and evidence, 32.
 Proposition, the, 11.
 elements of, 12.
 definition of, 13.
 fairness of statement, 16.
 Reading on both sides of question, 96.
 Real evidence, 38.
 Rebuttal, 115.
 Reduction to the absurd, 91.
 References, general, 95.
 Refutation of analogy, 81.
 of *a priori* reasoning, 77.
 of *a posteriori* reasoning, 80.
 of deduction, 65.
 of inferences, 53.
 Rhetoric, place of, 109.
 Rules for briefing, 103.
 Rules for syllogism, 61.
 Satisfactory evidence, 34.
 Skepticism vs. implicit belief, 33.
 Sifting material, 97.
 Sources of information, 14.
 Special issues, 26.
 Syllogism, 56.
 graphical illustration, 55.
 rules for, 61.
 fallacies of, 62.
 Team brief, 105.
 Term, definition and interpretation of, 13.
 Terms of syllogism, 56.
 Test of argument, 58.
 Testimonial evidence, 35.
 Transformation of major premise, 57.
 Webster-Hayne debate, 152, 169.
 Willey, Block Signal System, 15.
 Working hypothesis, 52.



APR 4 1930